United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT.

No. 964.

GENERAL EXCAVATOR COMPANY,
Appellant,

vs.

KEYSTONE DRILLER COMPANY,
Appellee.

KEYSTONE DRILLER COMPANY,
Cross-Appellant,

vs.

GENERAL EXCAVATOR COMPANY,
Cross-Appellee.

No. 965.

THE OSGOOD COMPANY,
Appellant,

vs.

KEYSTONE DRILLER COMPANY,
Appellee.

KEYSTONE DRILLER COMPANY,
Cross-Appellant,

vs.

THE OSGOOD COMPANY,
Cross-Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT,
FOR THE NORTHERN DISTRICT OF OHIO,
WESTERN DIVISION.

TRANSCRIPT OF RECORD
VOLUME III
PLAINTIFF'S AND DEFENDANTS' EXHIBITS

NAMES AND ADDRESSES OF COUNSEL
(Inside Front Cover)

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Plaintiff's Interrogatories (filed Feb. 9, 1929)

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Plaintiff's Interrogatories (filed Oct. 21, 1929)

Photographs of Excavator

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DEFENDANTS' EXHIBITS

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(W in last column signifies *Withdrawn*)

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No. 1.	Mahoney Railroad Ditching Machine	394	W
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No. 21.	Drawing of Vulcan Iron Works Company's "Back-Action" Excavator, dated May 13, 1895	481	W
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No. 23.	Page 497 of the Railway Review, Sept. 7, 1895, bearing illustration and description of Vulcan "Back-Action" Shovel, manufactured in accordance with Webber Patent No. 557,350	483	W
No. 24.	U. S. Patent No. 1,317,431, Sept. 30, 1919, to LeRoy P. Clutter for Ditching or Excavating Machine	572	201
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No. 28.	Financial Statement between Wallower Bros. and C. A. Dieter, dated March 18, 1920, for excavation work on Joplin Supply Co. Bldg., Joplin, Missouri	598	222
No. 29.	U. S. Patent No. 1,056,268, March 18, 1913, to J. G. Fairbanks for Excavating Apparatus	497	225
No. 30.	Fairbanks Steam Shovel Catalog, Copyrighted 1912	499	W
No. 31.	Blue-Print No. 315, of Fairbanks Steam Company's Back Action Shovel	499	W
No. 32.	Fairbanks Steam Shovel Company's Shop Order No. 185, dated Jan. 27, 1910	502	235
No. 33.	Fairbanks Steam Shovel Company's Shop Order No. 188, March 9, 1910, for Back Action Shovel Shipped to George A. Castle, Polk County, Minnesota	503	236
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No. 35.	Keystone Driller Company Drawing P48	517	W
No. 36.	Keystone Driller Company catalog consisting of outside cover page, inside title page (1) bearing the title Bulletin 901, 4th Edition January 1917, and pages 7 and 9 thereof	518	W

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No. 42.	Front Cover, inside page of front cover and page 4 of Brown Hoisting Machinery Company booklet No. 10, copyrighted 1924	681	W
No. 43.	The Brown Hoisting Machinery Company blue print 144,566, dated 4-13-22, general drawing of one yard shovel bucket	682	W
No. 44.	Industrial Brown Hoist Corporation blueprint 144,515, dated April 4, 1922, teeth for one yard shovel bucket	682	W
No. 45.	Brown Hoisting Machinery Corporation pattern No. 29332-1 for right-hand side rake tooth shown on Defendants' Exhibit 44	683	W
No. 45-A.	Photograph of Pattern of Exhibit 45	696	W
No. 46.	Brown Hoist Machinery Company blueprint 150,495, dated May 19, 1924, entitled general drawing of one-half yard shovel bucket	684	W
No. 47.	Brown Hoisting Machinery Company blueprint 150,499, dated June 12, 1924, entitled side teeth for one-half yard shovel bucket	684	W
No. 48.	Brown Hoisting Machinery Company blueprint 150,497, dated May 17, 1924, entitled door for one-half yard shovel bucket	684	W
No. 49.	Brown Hoisting Machinery Company pattern No. 30835/1	685	W
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No. 55.	Illustration of Marion Steam Shovel Company back action shovel in Charleston, South Carolina, phosphate fields	512	W
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No. 58.	Contract, dated Oct. 11, 1916, between Thew Automatic Shovel Company, Lorain, Ohio, and the North West Boulevard Company, Columbus, Ohio, and memorandum bill of lading covering the shovel referred to in said contract	655	W
No. 59.	Tracing of dipper bucket and ditcher stick, shown in Defendants' Exhibits 56 and 57	658	W
No. 60.	Thew Automatic Shovel Company's Circular No. 26	659	W
		Offered Vol. I	Printed Vol. III
No. 61.	Drawing of Hoisting Mechanism	558	W

No. 62. Prior Art Patents and Patents in Suit:
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				Printed Vol. III
(1)	7,340	Davis	May 7, 1850	281
(2)	77,949	Barnes	May 19, 1868	285
(3)	251,394	White	Dec. 27, 1881	289
(4)	254,563	Osgood	Mar. 7, 1882	293
(5)	323,538	Simmerly	Aug. 4, 1885	303
(6)	367,567	White	Aug. 2, 1887	317
(7)	386,438	Rood	July 17, 1888	323
(8)	418,311	Cross	Dec. 31, 1889	341
(9)	427,260	Forter	May 6, 1890	347
(10)	453,087	Milliken	May 26, 1891	357
(11)	477,933	Hennebery	June 28, 1892	361
(12)	493,421	Butler	Mar. 14, 1893	369
(13)	495,040	Hulett	Apr. 11, 1893	375
(14)	496,428	Morgan	May 2, 1893	383
(15)	508,685	Davy	Nov. 14, 1893	397
(16)	514,645	Davy	Feb. 13, 1894	401
(17)	519,835	Butler	May 15, 1894	407
(18)	528,312	Webber	Oct. 30, 1894	413
(19)	Re 11,516	Davy	Dec. 3, 1895	421
(20)	557,350	Webber	Mar. 31, 1896	429
(21)	579,589	King	Mar. 30, 1897	429
(22)	580,494	King	Apr. 13, 1897	431
(23)	589,565	King	Sept. 7, 1897	443
(24)	629,695	Knight	July 25, 1899	459
(25)	645,175	Libbe	Mar. 13, 1900	471
(26)	650,991	Robinson	June 5, 1900	485
(27)	659,632	Hetlesaeter	Oct. 9, 1900	493
(28)	665,682	Hetlesaeter	Jan. 8, 1901	503

				Printed Vol. III
(29)	670,210	Shannon	Mar. 19, 1901	511
(30)	674,417	Howard	May 21, 1901	521
(31)	708,658	Osgood	Sept. 9, 1902	525
(32)	709,733	Barton et al.	Sept. 23, 1902	539
(33)	711,449	Williams	Oct. 14, 1902	553
(34)	711,992	Mason	Oct. 28, 1902	557
(35)	716,538	Harrison	Dec. 23, 1902	561
(36)	741,099	Bisbee	Oct. 13, 1903	565
(37)	745,329	Coffey	Dec. 1, 1903	593
(38)	776,125	Dutton	Nov. 29, 1904	597
(39)	806,288	Pugh	Dec. 5, 1905	603
(40)	808,345	Cross	Dec. 26, 1905	635
(41)	809,436	Ferris	Jan. 9, 1906	643
(42)	820,055	Libbe	May 8, 1906	647
(43)	822,529	Libbe	June 5, 1906	661

(Defendants' Exhibit No. 62 Continued in Vol. IV).

PLAINTIFF'S INTERROGATORY EXHIBITS.

Cases 964 and 965.

The Exhibits referred to on this and the ensuing page, and which are bound into this volume as pages 1 to 90 inclusive are described herewith, owing to the difficulty of printing the proper designation on the Exhibits themselves.

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Plaintiff's Interrogatories (filed Feb. 9, 1929)

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Exhibit 1. General Excavator Catalogue—Bulletin No. 2703	18	1
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Affidavit of Robert Rex Downie (Filed Feb. 9, 1929) Photographs Illustrating Defendant's Machine in Operation:		
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Exhibit 8. Photograph	25	37
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CASE 965.

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(b) Photograph of a Back Hoe, inscribed: "Here's the way an Osgood Back Hoe looks from position in trench in front of the machine. Owned by Gjellefats & Chapman, of Chicago, Ill., and engaged on a sewer job"	105	79
Exhibit 8. Large photograph of Excavator	105	81

Plaintiff's Interrogatories (filed Oct. 21, 1929)

Photographs of Excavator

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PLAINTIFF'S EXHIBIT NO. P-6.

Stipulation dated Feb. 25, 1931, and filed in Case No. 965.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

STIPULATION.

It is hereby stipulated and agreed by and between counsel in the above-entitled cause, this Honorable Court consenting,

1. That the Keystone Driller Company, Plaintiff herein, is now and was at the time of filing the Bill of Complaint in the above-entitled suit, the owner of the full right, title and interest in and to the following patents:

No. 1,317,431, Sept. 30, 1919, Le Roy P. Clutter
No. 1,511,114, Oct. 7, 1924, R. R. Downie
No. 1,543,250, June 23, 1925, R. R. Downie;

2. That the Keystone Driller Company, Plaintiff herein, is now and was at the time of filing the Supplemental Bill of Complaint in the above-entitled suit, the owner of the full right, title and interest in and to the following patents:

No. 1,709,466, April 16, 1929, R. R. Downie
No. 1,716,432, June 11, 1929, R. R. Downie;

3. That the catalogs, bulletin Nos. 2620 and 2624 were issued and distributed by the Defendant, The Osgood Company.

4. That the Defendant, The Osgood Company, made and/or used, and/or sold Back-Hoe Machines like those illustrated and described on pages 20 and 21 and illustrated on page 23 of catalog, bulletin No. 2620 of The Osgood Company marked Exhibit 1 and attached to Plaintiff's interrogatories, filed February 9, 1929, and the Back-Hoe Machines illustrated in Exhibit 3 attached to Plaintiff's interrogatories filed February 9, 1929, and the Back-Hoe Machine illustrated in Exhibit 8 attached to Plaintiff's Interrogatories filed February 9, 1929, and the Back-Hoe Machine illustrated and described in Plaintiff's Exhibit 9 attached to the Reply Affidavit of R. R. Downie, dated April 15, 1929, between June 23, 1925, and February 9, 1929. Copies of the aforesaid exhibits are attached hereto.

5. That the Defendant, The Osgood Company, made and/or used, and/or sold Back-Hoe Excavator Scoops and Back-Hoe Excavator Scoop Assemblies like those illustrated and described on pages 20 and 21 and illustrated on page 23 of catalog, bulletin No. 2620 of The Osgood Company marked Exhibit 1 and attached to Plaintiff's interrogatories, filed February 9, 1929, and the Back-Hoe Machine illustrated in Exhibit 3 attached to Plaintiff's interrogatories, filed February 9, 1929, and the Back-Hoe Machines illustrated in Exhibit 8 attached to Plaintiff's interrogatories filed February 9, 1929, and the Back-Hoe Machine illustrated and described in Plaintiff's Exhibit 9 attached to the Reply Affidavit of R. R. Downie, dated April 15, 1929, between June 11, 1929, and August 23, 1929. Copies of the aforesaid exhibits are attached hereto.

6. That uncertified printed copies of the patents in suit in the above-entitled case may be used with the same force and effect in this case as original or certified copies.

CORBETT & MAHONEY,
Counsel for Defendant.

February 25, 1931.

RICHEY & WATTS,
Counsel for Plaintiff.

February 26, 1931.

PRINTER'S NOTE:

Plaintiff's Exhibit No. 1, attached to the foregoing Stipulation, consisted of photostat reproductions of pages 20, 21 and 23 of Osgood Bulletin 2620, which has been included hereinabove, being one of the catalogs (Exhibit 1) attached to Plaintiff's Interrogatories, filed February 9, 1929, in Case No. 965, said pages have accordingly been omitted. (See pages 66, 67 and 69 of Exhibits, Vol. III.)

Plaintiff's Exhibit No. 3 attached to the foregoing Stipulation consisted of a photostatic reproduction of one of the photographs in the Illustrated Paper entitled: "The Osgood Pictorial News", which has been included hereinbefore, being one of the catalogs (Exhibit 3) attached to Plaintiff's Interrogatories filed Feb. 9, 1929, in case No. 965. Said reproduction has accordingly been omitted. The picture in "The Osgood Pictorial News", was described as "An Osgood Gasoline Back Hoe, engaged in excavating a section of the New York Subway. Moranti & Raymond of New York City are the owners." (See page 77 of Exhibits, Vol. III.)

Plaintiff's Exhibit No. 8, attached to the foregoing Stipulation, consisted of a photostat reproduction of a photograph of an Excavator working in rock and numbered No. 3364, which has been included hereinabove, being one of the Exhibits (Exhibit 8) attached to Plaintiff's Interrogatories filed Feb. 9, 1929, in Case No. 965. Said reproduction has accordingly been omitted. (See page 81 of Exhibits, Vol. III.)

Plaintiff's Exhibit No. 9, attached to the foregoing Stipulation, consisted of a photostat reproduction of an Excavator. A reproduction of it appears following.

PLAINTIFF'S EXHIBIT NO. P-7.

Certified Copy of the Decree on Motion for Preliminary Injunction in Keystone Driller Co. vs. Day & Maddock Co., Equity 3617, Jan. 23, 1931, Cleveland Docket.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

THE UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION, SS.

At a stated term of the District Court of the United States, within and for the Eastern Division of the Northern District of Ohio, begun and held at the City of Cleveland, in said District, on first Tuesday in October, being the 7th day of said month, in the year of our Lord one thousand nine hundred and Thirty, and of the Independence of the United States of America, one hundred and Fifty-fifth, to wit: on Friday, the 23 day of January A. D. 1931. Present: Honorable Paul Jones, United States District Judge. Among the proceedings then and there had were the following, to-wit:

[Caption Omitted]

DECREE.

This cause coming on to be heard at this term of the Court, upon the motion for a preliminary injunction presented by the Plaintiff, and thereupon, upon consideration thereof, it is

Ordered, Adjudged and Decreed, as follows:

1. That Letters Patent of the United States, No. 1,317,431 on the invention of Le Roy P. Clutter for Ditching or Excavating Machines are good and valid in law as to claim 4 thereof, and Letters Patent of the United States, No. 1,476,121 on the invention of G. E. Wagner *et al.* for Excavating Scoop are good and valid in law as to claims 6 and 7 thereof, and Letters Patent of the United States, No. 1,511,114 on the invention of Robert Rex Downie for Excavating Machine are good and valid in law as to all the claims thereof.

2. That the title to said Letters Patent No. 1,317,431, No. 1,476,121 and No. 1,511,114, and each of them, is vested in the Plaintiff, Keystone Driller Company.

3. That the Defendant, The Day & Maddock Company, have infringed upon said Letters Patent Nos. 1,317,431, 1,476,121, and 1,511,114, and have violated the exclusive rights of the Plaintiff thereunder by making, and/or using, and/or vending Excavating Machines embodying a Back Hoe of the type illustrated in the catalog of The Day & Maddock Company identified as "Contractors' Equipment" on pages 127 and 132 and the Back Hoe illustrated in the advertisement of Northwest Engineering Co. which appeared in the July, 1929 issue of "Construction Methods."

4. That a Writ of Injunction issue out of and under the seal of this Court directed to the Defendant, The Day & Maddock Company, pending this suit, enjoining and restraining the Defendant, its officers, agents, servants, employees, associates and confederates, and all those in active concert or participation with them from directly or indirectly making, and/or using, and/or vending excavating devices embodying a Back Hoe of the type illustrated in the catalog of The Day & Maddock Company identified as "Contractors' Equipment" on pages 127 and 132 and the Back Hoe illustrated in the advertisement of Northwest Engineering Co. which appeared in the July, 1929 issue of "Construction Methods", and the further advertisement of Northwest Engineering Co. which appeared in the July, 1928 issue of "Construction Methods," and any device embodying said patented inventions, and from offering or advertising so to do, and from aiding and abetting, or in any way contributing to the infringement of said Letters Patent, and each of them, and particularly as to claim 4 of Patent No. 1,317,431, claims 6 and 7 of Patent No. 1,476,121, and as to all of the claims of Patent No. 1,511,114. Issue of Writ of Injunction conditioned upon the Plaintiff giving bond in the sum of $3,000.00.

JONES,
United States District Judge.

Cleveland, Ohio
January 23, 1931.

We approve the above Decree as to form.

....,
Counsel for Defendant.

THE UNITED STATES OF AMERICA
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

I, F. J. DENZLER, Clerk of the District Court of the United States within and for said District, do hereby certify that I have compared the within and foregoing transcript with the original Decree on Motion for Preliminary Injunction entered upon the Journal of the proceedings of said Court in the therein-entitled cause, at the term and on the day therein named, and do further certify that the same is a true, full, and complete transcript and copy thereof.

WITNESS my official signature, and the seal of said Court at Cleveland, in said District, this 25th day of February, A. D. 1931, and the 155th year of the Independence of the United States of America.

F. J. DENZLER,
Clerk,

(Seal)

By W. L. STEVENS,
Deputy Clerk.

PLAINTIFF'S EXHIBIT NO. P-8.

Certified Copy of Final Decree by Consent in Keystone Driller Co. vs. Thew Shovel, No. 3616, Cleveland Docket.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

THE UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION, SS:

At a stated term of the District Court of the United States, within and for the Eastern Division of the Northern District of Ohio, begun and held at the City of Cleveland, in said District, on first Tuesday in October, being the 7th day of said month, in the year of our Lord one thousand nine hundred and thirty, and of the Inde-

pendence of the United States of America the one hundred and fifty-fifth, to-wit: on Tuesday, the 13th day of January, A. D. 1931. Present: Honorable ...., United States District Judge. Among the proceedings then and there had were the following, to-wit:

[Caption Omitted]

FINAL DECREE BY CONSENT.

It appearing to the Court that the bill in equity in the above entitled cause was filed in this Court on the 11th day of December, 1930, and a subpoena issued and duly served on the Defendant as required by law, and the Defendant not desiring to defend this cause, and an agreement having been entered into between the parties herein, in which Defendant has agreed to the entry of this consent decree, it is hereby ordered, adjudged and decreed as follows, viz:

1—That Letters Patent of the United States to Le Roy P. Clutter No. 1,317,431, dated September 30, 1919 for Ditching or Excavating Machine is good and valid in law as to claim 4 thereof; that the inventor, Le Roy P. Clutter named in the said patent was the first, true and original inventor of the invention, improvement and combination described in claim 4; and that the Plaintiff, Keystone Driller Company, is the lawful owner of the entire right, title and interest in and to said invention and in and to the Letters Patent therefor as aforesaid;

2—That Letters Patent of the United States to G. E. Wagner, et al., No. 1,476,121, dated December 4, 1929, for Excavating Scoop is good and valid in law as to claims 6 and 7 thereof; that the inventors, G. E. Wagner, et al., named in the said patent, were the first, true, original and joint inventors of the inventions, improvements and combinations described in claims 6 and 7 thereof; and that the Plaintiff, the Keystone Driller Company, is the lawful owner of the entire right, title and interest in and to the Letters Patent therefor as aforesaid;

3—That the Defendant, The Thew Shovel Company, has infringed upon said Letters Patent within the Northern District of Ohio, Eastern Division, and elsewhere in the United States, by the manufacture, sale and/or use of Ditching or Excavating Machines, Excavating Scoops and Excavating Machines employing and/or embodying the inventions set forth in the claims of

certain of said patents, and particularly upon claim 4 of patent No. 1,317,431 by the manufacture, sale and/or use of machines illustrated on pages 22, 23, 24, 34 and the upper figure only of 35 of the catalog marked Plaintiff's Exhibit 1 and in the advertisement of The Thew Shovel Company in the February, 1930 issue of the magazine "Construction Methods", marked Plaintiff's Exhibit 2, and the advertisement of The Thew Shovel Company in the November 27, 1930 issue of "Engineering News-Record" page 26 and the lower right-hand view only of page 27, marked Plaintiff's Exhibit 3; and the Defendant, The Thew Shovel Company, has infringed upon said Letters Patent within the Northern District of Ohio, Eastern Division, and elsewhere in the United States, by the manufacture, sale, and/or use of Ditching or Excavating Machines, Excavating Scoops and Excavating Machines employing and/or embodying the inventions set forth in the claims of certain of said patents and particularly upon claims 6 and 7 of Patent No. 1,476,121 by the manufacture, sale and/or use of the machines illustrated on pages 22, 23, 24, 34 and the upper figure only of 35 of the catalog marked Plaintiff's Exhibit 1 and in the advertisement of The Thew Shovel Company in the February, 1930 issue of the magazine "Construction Methods", marked Plaintiff's Exhibit 2, and the advertisement of The Thew Shovel Company in the November 27, 1930 issue of "Engineering News-Record," page 26 and the lower right-hand view only of page 27, marked Plaintiff's Exhibit 3;

4—That it having been represented to the Court that the parties have agreed in a contract executed contemporaneously herewith that the Plaintiff recover from the Defendant, The Thew Shovel Company, a certain definite sum for all profits, gains and advantages which the Defendant has derived, received or made by reason of the said infringement, or damages which the Plaintiff has sustained, no accounting is ordered;

5—That an injunction be issued out of and under the seal of this Court directed to the Defendant, The Thew Shovel Company, and its officers, servants, agents, employees and workmen, and all their privies and each and every one of them, enjoining and restraining them during the remainder of the respective terms of said Letters Patent No. 1,317,431 and 1,476,121, from directly or indirectly constructing, or causing to be constructed, and/or using, and/or selling, or causing to be used or sold,

or advertising for sale, ditching or excavating machines and excavating scoops like apparatus illustrated in Plaintiff's Exhibits 1, 2 and 3, and any other apparatus, articles, devices or parts, and/or combinations, containing, employing or embodying the inventions and improvements described in said Letters Patent No. 1,317,431 and particularly referred to in claim 4 thereof and No. 1,476,121 and particularly referred to in the claims 6 and 7 thereof, or any of them, or apparatus article, devices, ditching or excavating machines or excavating scoop to be used, or capable only of use, in a combination infringing any of said patents, and from infringing and contributing to infringement upon or violating any of said Letters Patent in any way whatsoever without the license of Plaintiff.

6—That in view of the permanent injunction hereinbefore provided, the Plaintiff's Motion for a Preliminary Injunction is hereby overruled without prejudice.

Cleveland, Ohio, January 13, 1931.

JONES,
United States District Judge.

We consent to the entry of the above Decree.

RICHEY & WATTS,
Counsel for Plaintiff.

BROCKETT, HYDE, HIGLEY & MYERS,
Counsel for Defendant.

THE UNITED STATES OF AMERICA
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

I, F. J. DENZLER, Clerk of the District Court within and for said District, do hereby certify that I have compared the within and foregoing transcript with the original Final Decree by Consent entered upon the Journal of the proceedings of said Court in the therein-entitled cause, at the term and on the day therein named, and do further certify that the same is a true, full, and complete transcript and copy thereof.

WITNESS my official signature, and the seal of said Court at Cleveland, in said District, this 25th day of February, A. D. 1931, and the 155th year of the Independence of the United States of America.

F. J. DENZLER, *Clerk,*
(Seal) By W. L. STEVENS, *Deputy Clerk.*

PLAINTIFF'S EXHIBIT P-9.

Certified Copy of Final Decree in Keystone Driller Co. vs. Byers Machine Co., Equity No. 2084, Cleveland Docket.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

THE UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION, ss:

At a stated term of the District Court of the United States, within and for the Eastern Division of the Northern District of Ohio, begun and held at the City of Cleveland, in said District, on first Tuesday in October, being the 2nd day of said month, in the year of our Lord one thousand nine hundred twenty-eight, and of the Independence of the United States of America, to-wit: on Thursday, the 31st day of January, A. D., 1929. Present: Honorable Paul Jones, United States District Judge. Among the proceedings then and there had were the following, to-wit:

[Caption Omitted]

FINAL DECREE.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

(1) That Letters Patent of the United States to LeRoy P. Clutter, No. 1,317,431, dated September 30, 1919, for Ditching or Excavating Machine, is good and valid in law as to claim 4 thereof; that the inventor, LeRoy P. Clutter, named in the said patent was the first, true and original inventor of the invention, improvement and combination described in said claim 4; and that the Plaintiff, Keystone Driller Company, is the lawful owner of the entire right, title and interest in and to said invention and in and to the Letters Patent therefor as aforesaid;

That Letters Patent of the United States to G. E. Wagner, et al., No. 1,476,121, dated December 4, 1923, for Excavating Scoop, is good and valid in law as to claims 6 and 7 thereof; that the inventors, G. E. Wagner, et al., named in the said patent, were the first, true, orig-

inal and joint inventors of the inventions, improvements and combinations described in claims 6 and 7 of said patent; and that the Plaintiff, the Keystone Driller Company, is the lawful owner of the entire right, title and interest in and to said inventions and in and to the Letters Patent therefor as aforesaid;

That Letters Patents of the United States to Robert Rex Downie, No. 1,511,114, dated October 7, 1924, and No. 1,543,250, dated June 23, 1925, for Excavating Machines, are good and valid in law as to all the claims of each patent thereof; that the inventor, Robert Rex Downie, named in the said patents was the first, true and original inventor of the inventions, improvements and combinations described in the said patents and in said claims; and that the Plaintiff, the Keystone Driller Company, is the lawful owner of the entire right, title and interest in and to said inventions and in and to the said Letters Patents therefor as aforesaid;

That the Defendant, The Byers Machine Company, has infringed upon said Letters Patent within the Northern District of Ohio, Eastern Division, and elsewhere in the United States, by the manufacture, sale and/or use of Ditching or Excavating Machines, Excavating Scoops and Excavating Machines employing and/or embodying the inventions set forth in the claims of certain of said patents, and particularly upon claim 4 of Patent No. 1,317,431 by the manufacture, sale and/or use of machines illustrated on pages 2, 10 and 11 and elsewhere in Exhibit 16 and upon pages 2, 6, 14, 16, 17, 18, 19, 50 and 58 and elsewhere in Exhibit 17; all of the claims of Patent No. 1,511,114 by the manufacture, sale and/or use of the machines illustrated on pages 2, 10 and 11 and elsewhere in Exhibit 16 and upon pages 2, 6, 14, 16, 17, 18, 19, 50 and 58 and elsewhere in Exhibit 17; and all of the claims of Patent No. 1,543,250 by the manufacture, sale and/or use of the machines illustrated on pages 2, 10 and 11 and elsewhere in Exhibit 16 and upon pages 2, 6, 14, 16, 17, 18, 19, 50 and 58 and elsewhere in Exhibit 17; and the Defendant, Byers Machine Company, has infringed upon said Letters Patents within the Northern District of Ohio, Eastern Division, and elsewhere in the United States, by the manufacture, sale and/or use of Ditching or Excavating Machines, Excavating Scoops and Excavating Machines employing and/or embodying the inventions set forth in the claims of certain of said patents, and particularly upon claims 6 and 7 of Patent

No. 1,476,121 by the manufacture, sale and/or use of the machines illustrated on pages 8, 9, 21, 22, 23, 24, 26 and 50 and elsewhere in Exhibit 18; and claims 6 to 14, both inclusive of patent 1,511,114, by the manufacture, sale and/or use of the machines illustrated on pages 8, 9, 21, 22, 23, 24, 26 and 50 and elsewhere in Exhibit 18; and Byers Machine Company is threatening to infringe claim 4 of said Clutter patent, No. 1,317,431 and claims 1 to 5, inclusive, of said Downie patent, No. 1,511,114 by offering to sell and/or use machines like those illustrated in the said pages of Exhibits 16 and 17; and The Byers Machine Company is threatening to infringe claims 6 and 7 of the patent to Wagner, et al., No. 1,476,121 by offering to sell and/or use machines like those illustrated in the said pages of Exhibit No. 18;

(2) That the Plaintiff do recover from each of the Defendants, The Byers Machine Company and Byers Machine Company, all profits, gains and advantages which the said Defendants, have or shall have derived, received or made by reason of said infringements, and that the Plaintiff do recover from each of said Defendants any and all damages which the Plaintiff has sustained, or shall sustain by reason of said infringement by said Defendants.

(3) That this cause be, and the same is hereby referred to ..... Esq., a Master, to ascertain the amount of such gains and profits and the amount of damages sustained by said Plaintiff by reason of such infringement; that the Defendants file their respective accounts with said Master in accordance with the Rules of Equity of the Supreme Court of the United States relevant thereto; that on such accounting the Plaintiff shall have the right to cause an examination of the officers, servants, agents, and employees of the Defendants and of each of them orally or otherwise, and also to cause the production of Defendants' books, vouchers, accounts, bills of lading, shop orders, and all documents relating to the manufacture of ditchers and parts thereof by Defendants and each of them, and that said Defendants, through their representatives, attend for such purpose before the Master from time to time as said Master shall direct; and that all testimony and exhibits offered and used in this cause on behalf of either party may be referred to and used in such accounting;

(4) That an injunction be issued out of and under the seal of this Court direct to the Defendants, The Byers

Machine Company and Byers Machine Company, and each of them, and each of their officers, servants, agents, employees and workmen, and all their privies, and each and everyone of them, enjoining and restraining them during the remainder of the respective terms of said Letters Patents, No. 1,317,431, No. 1,476,121, No. 1,511,114 and No. 1,543,250, from directly or indirectly constructing, or causing to be constructed, and/or using, and/or selling, or causing to be used or sold, or advertising for sale, ditching or excavating machines and excavating scoops like apparatus illustrated in Plaintiff's Exhibit 16, page 2, the lower figure thereon, page 10, the left figure thereon and page 11 and elsewhere in the exhibit, Plaintiff's Exhibit 17, page 2, the lower left figure thereon, page 6, the uppermost figure thereon, page 14, pages 16, 17, 18, 19, 50 and 58 and elsewhere in the exhibit, Plaintiff's Exhibit 18, pages 8, 9, 21, 22, 23, 24, 26 and 50 and elsewhere in the exhibit, and any other apparatus, articles, devices or parts, and/or combinations, containing, employing or embodying the inventions and improvements described in said Letters Patents, No. 1,317,431 and particularly referred to in claim 4 thereof, and No. 1,476,121, and particularly referred to in claims 6 and 7 thereof, and No. 1,511,114 and No. 1,543,250 and particularly referred to in the claims thereof or any of them, or apparatus article, devices, ditching or excavating machines or excavating scoop to be used, or capable only of use, in a combination infringing any of said patents, and from infringing and contributing to infringement upon or violating any of said Letters Patent in any way whatsoever.

(5) That the Plaintiff recover from the Defendants, the Plaintiff's full costs in this suit to be taxed and to have execution therefor.

Entered this 31st day of January, 1929.

PAUL JONES,
United States District Judge.

Approved as to form this 30th day of January, 1929.

FAY, OBERLIN & FAY,
Attorneys for Defendants.

THE UNITED STATES OF AMERICA
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

I, F. J. DENZLER, Clerk of the District Court of the United States within and for said District, do hereby certify that I have compared the within and foregoing transcript with the original Final Decree entered upon the Journal of the proceedings of said Court in the therein-entitled cause, at the term and on the day therein named, and do further certify that the same is a true, full, and complete transcript and copy thereof.

WITNESS my official signature, and the seal of said Court at Cleveland, in said District, this 25th day of February, A. D. 1931, and the 155th year of the Independence of the United States of America.

F. J. DENZLER,
Clerk,

By W. L. STEVENS,
Deputy Clerk.

PLAINTIFF'S EXHIBIT NO. P-10.

Certified Copy of Interlocutory Decree in Keystone vs. Bay City Shovel, Inc., Equity No. 205, Eastern District of Michigan, Northern Division.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

[Caption Omitted]

INTERLOCUTORY DECREE.

It appearing to the Court that the Bill in Equity in the above entitled cause was filed in this Court on the

24th day of December, 1926, and a subpoena issued and duly served on the defendant as required by law, and the patents in suit having been sustained by the District and Circuit Courts of Appeal, and the defendant not desiring to contest the issue of infringement or the validity of the patent in suit, and this decree being assented to by the parties, this Court does hereby order, adjudge and decree as follows:

1. That Letters Patent of the United States to Le Roy P. Clutter, No. 1,317,431, dated September 30, 1919, for Ditching or Excavating Machine, is good and valid in law as to claim 4 thereof; that the inventor, Le Roy P. Clutter, named in the said patent was the first, true and original inventor of the invention, improvement and combination described in said claim 4; and that the plaintiff, Keystone Driller Company, is the lawful owner of the entire right, title and interest in and to said invention and in and to the Letters Patent therefore as aforesaid;

That Letters Patent of the United States to Robert Rex Downie, No. 1,511,114, dated October 7, 1924, and No. 1,543,250 dated June 23, 1925, for Excavating Machines are good and valid in law as to all the claims of each patent thereof; that the inventor, Robert Rex Downie, named in the said patents was the first, true and original inventor of the inventions, improvements and combinations described in the said patents and in said claims; and that the Plaintiff, the Keystone Driller Company, is the lawful owner of the entire right, title and interest in and to said inventions and in and to the said Letters Patents therefor as aforesaid;

That the Defendant, Bay City Shovels, Inc., has infringed upon said Letters Patent within the Eastern District of Michigan, Northern Division, and elsewhere in the United States, by the manufacture, sale and/or use of Ditching or Excavating Machines and Excavating Scoops employed and/or embodying the inventions set forth in the claims of certain of said patents, and particularly upon claim 4 of Patent No. 1,317,431 by the manufacture, sale, and/or use of Back Digging Excavating Machines illustrated in Exhibits 1 to 6 inclusive, and particularly on pages 8, 9, 10, 11, 12 and elsewhere in Bay City Dredge Works catalog No. 25 (Exhibit 1); pages 6 and 7 and elsewhere in Bay City Dredge Works catalog R-2 (Exhibit 2); pages 11, 12, 17 and elsewhere in Bay City

Shovels, Inc. catalog T-5 (Exhibit 3); pages 14, 17, 18, 19 and elsewhere in Bay City Shovels, Inc. catalog K-3 (Exhibit 4); advertisement of Bay City Shovels, Inc. which appeared in the March, 1930 issue of "Construction Methods" (Exhibit 5), and the advertisement of Bay City Shovels, Inc. which appeared in the August, 1930 issue of "Construction Methods" (Exhibit 6); all of the claims of Patent No. 1,511,114 by the manufacture, sale and/or use of the Back Digging Excavating Machine illustrated on page 8 and elsewhere of Exhibit 1; page 7 and elsewhere of Exhibit 2; page 12 and elsewhere of Exhibit 3; pages 14, 17, 18 and 19 of Exhibit 4; and Exhibit 5; and all of the claims of Patent No. 1,543,250 by the manufacture, sale and/or use of Back Digging Excavating Machines illustrated on pages 6, 7 and elsewhere in Exhibit 2; pages 12, 17 and elsewhere of Exhibit 3; pages 17, 18 and 19 and elsewhere of Exhibit 4; and Exhibit 5 and Bay City Shovels, Inc. is threatening to infringe claim 4 of said Clutter Patent No. 1,317,431 and all the claims of Patents Nos. 1,511,114 and 1,543,250 and offering to sell and/or use machines like those illustrated in the aforesaid Exhibits 1 to 6 respectively.

2. That the plaintiff do recover from the defendant, Bay City Shovels, Inc. and/or its predecessor, Bay City Dredge Works, all profits, gains and advantages which said defendant has or shall have derived, received or made by reason of said infringements, and/or that the plaintiff do recover from said defendant any and/or all damages which the plaintiff has sustained or shall sustain by reason of said infringements by said defendant and/or reasonable royalties in lieu of same.

3. That this cause be, and the same is hereby referred to William S. Sayre, Esq., a Master, or brought on to be heard before the Honorable Arthur J. Tuttle to ascertain the amount of such gains and profits and/or the amount of damages sustained by said plaintiff by reason of such infringements; and/or reasonable royalties in lieu of same; that the defendant file its account in accordance with the Rule of Equity of the Supreme Court of the United States relative thereto; that on such accounting the Plaintiff shall have the right to cause an examination of the officers, servants, agents and employees of the Defendant, orally or otherwise, and also to cause the production of the Defendant's books, vouchers, accounts, bills of lading, shop orders, and all

documents relating to the manufacture of Ditching or Excavating Machines and parts thereof by the Defendant, and that said Defendant, through its representatives, attend for such purpose before the Court or Master from time to time as said Court or Master shall direct; and that all testimony and exhibits offered and used in this cause on behalf of either party may be referred to and used in such accounting;

4. That an injunction issue out of and under the seal of this Court directed to the Defendant, Bay City Shovels, Inc., their officers, servants, agents, employees and workmen, and all other privies, and each and everyone of them, enjoining and restraining them during the remainder of the respective terms of said Letters Patent Nos. 1,317,431, 1,511,114 and 1,543,250 from directly or indirectly constructing or causing to be constructed, and/or using, and/or selling or causing to be used or sold, or advertising for sale, Ditching or Excavating Machines and Excavating Scoops and apparatus like Back Digging Excavating Machines illustrated in Plaintiff's Exhibits 1 to 6 inclusive and particularly on pages 8, 9, 10, 11, 12 and elsewhere in Bay City Dredge Works catalog No. 25 (Exhibit 1); pages 6 and 7 and elsewhere in Bay City Dredge Works catalog No. R-2 (Exhibit 2); pages 11, 12, 17 and elsewhere of Bay City Shovels, Inc. catalog T-5 (Exhibit 3); pages 14, 17, 18, 19 and elsewhere of Bay City Shovels, Inc. catalog K-3 (Exhibit 4); the advertisement of Bay City Shovels, Inc. which appeared in the March, 1930 issue of "Construction Methods" (Exhibit 5); and the advertisement of Bay City Shovels, Inc. which appeared in the August, 1930 issue of "Construction Methods" (Exhibit 6), and any other apparatus, article, device or parts, and/or combinations containing, employing, or embodying the inventions and improvements described in said Letters Patent No. 1,317,431, and particularly referred to in claim 4 thereof, and No. 1,511,114 and No. 1,543,250, and particularly referred to in all the claims thereof or any of them, or apparatus, article, device, Ditching or Excavating Machines or Excavating Scoop to be used or capable only of use in a combination infringing any of said patents and from infringing or contributing to infringements upon or violating any of said Letters Patent in any way whatsoever.

5. That the Plaintiff recover from the Defendant the Plaintiff's full cost of this suit to be taxed and for execution therefor.

Entered this 9th day of February, 1931.

ARTHUR J. TUTTLE,
United States District Judge.

Approved as to form this 9th day of February, 1931.

GILBERT W. HAND, and
CLARK & HENRY,
Attorneys for Defendants.

We assent to the entry of the above decree.

RICHEY & WATTS,
Counsel for Plaintiff.

GILBERT W. HAND, and
CLARK & HENRY,
Attorneys for Defendant.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF MICHIGAN, ss:

I, ELMER W. VOORHEIS, Clerk of the United States District Court in and for the Eastern District of Michigan, do hereby certify that the annexed and foregoing is a true and full copy of the original Interlocutory Decree now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Bay City this 20th day of February, A. D. 1931.

ELMER W. VOORHEIS,
Clerk.

(Seal)

By CLARENCE S. PETTIT,
Deputy Clerk.

PLAINTIFF'S EXHIBIT NO. P-11.

Assignments of Patents in Suit to Keystone Driller Co.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

ASSIGNMENT.

Liber Y 128 Page 255
1524

WHEREAS, I, Robert Rex Downie, a citizen of the United States and a resident of Beaver Falls, in the County of Beaver and State of Pennsylvania, have invented an Improvement in Ditcher Scoop Assemblies and have executed an application for Letters Patent of the United States of America based thereon this 31st day of Dec. 1926.

AND WHEREAS, Keystone Driller Company, a corporation of Pennsylvania, is desirous of acquiring the entire right, title and interest in and to the said invention in and throughout the United States of America, its Territories, and all countries foreign thereto, and in and to the said application for Letters Patent, and in and to any and all Letters Patent of the United States of America and countries foreign thereto, which have been or may be granted on said invention or any part thereof;

NOW THEREFORE, for one dollar and other good and valuable consideration, receipt of which is hereby acknowledged, I the said Robert Rex Downie have agreed to and do hereby sell, assign and transfer unto the said Keystone Driller Company, the entire right, title and interest in and throughout the United States of America, its Territories and all countries foreign thereto in and to said invention, said application for Letters Patent, and any and all Letters Patent and extensions thereof, of the United States of America and countries foreign thereto, which have been or may be granted on said invention or any part thereof or on said application or any divisional, continuing, renewal, re-issue or other application based in whole or in part thereon, or based upon said invention;

TO BE HELD AND ENJOYED by the said Keystone Driller Company, its ~~heirs, executors, administrators,~~ successors, and assigns to the full ends of the terms for which said Letters Patent or any of them have been or may be granted, as fully and entirely as the same would

have been held and enjoyed by me had no sale and assignment of said interest been made; and I do hereby authorize and request the Commissioner of Patents of the United States of America to issue any and all Letters Patent of the United States of America which may be granted upon the said applications above referred to, or any of them, or upon said invention or any part thereof, to Keystone Driller Company, aforesaid and I hereby agree for myself and for my heirs, executors and administrators, to execute without further consideration any further lawful documents and any further assurances, and any re-issue, renewal, or other application for Letters Patent that may be deemed necessary by the assignee herein named, fully to secure to the said assignee my interest as aforesaid in and to said invention or any part thereof, and in and to said several Letters Patent or any of them.

And I do hereby covenant for myself and my legal representatives and agree with Keystone Driller Company, successors and assigns that I have granted no license to make, use or sell the said invention, that prior to the execution of this deed my right, title and interest in the said invention had not been encumbered, that I then had good right and title to sell and assign the same and that I have not executed and will not execute any instrument in conflict herewith.

In Witness Whereof, I have hereunto set my hand and affixed my seal this 31st day of Dec. A. D. 1926.

(Seal) Robert Rex Downie.

County of Beaver,
State of Pennsylvania.

On this 31st day of Dec., A. D. 1926 appeared the above-named Robert Rex Downie personally known to me, and known by me to be the one who executed the foregoing instrument, and acknowledged the same to be his free act and deed, before me,

Chas. Theo. Smith,
(Seal) *Notary Public.*

Commission Expires March 13, 1927.

Recorded Transfers of Patents U. S. Patent Office. Jan. 3, 1927. Liber Y128, page 255.

Thomas E. Robertson,
Commissioner of Patents.

ASSIGNMENT.

Liber Y128 Page 256 1525

WHEREAS, I, Robert Rex Downie, a citizen of the United States and a resident of Beaver Falls, in the County of Beaver and State of Pennsylvania, have invented an Improvement in Excavating Scoops and Processes and have executed an application for Letters Patent of the United States of America based thereon this first day of Jany., 1927.

AND WHEREAS, Keystone Driller Company, a corporation of Pennsylvania, is desirous of acquiring the entire right, title and interest in and to the said invention in and throughout the United States of America, its Territories, and all countries foreign thereto, and in and to the said application for Letters Patent, and in and to any and all Letters Patent of the United States of America and countries foreign thereto, which have been or may be granted on said invention or any part thereof;

NOW THEREFORE, for one dollar and other good and valuable consideration, receipt of which is hereby acknowledged, I the said Robert Rex Downie have agreed to and do hereby sell, assign and transfer unto the said Keystone Driller Company, the entire right, title and interest in and throughout the United States of America, its Territories and all countries foreign thereto in and to said invention, said application for Letters Patent, and any and all Letters Patent and extensions thereof, of the United States of America and countries foreign thereto, which have been or may be granted on said invention or any part thereof or on said application or any divisional, continuing, renewal, re-issue or other application based in whole or in part thereon, or based upon said invention;

TO BE HELD AND ENJOYED by the said Keystone Driller Company, its ~~heirs, executors, administrators,~~ successors, and assigns to the full ends of the terms for which said Letters Patent or any of them have been or may be granted, as fully and entirely as the same would have been held and enjoyed by me had no sale and assignment of said interest been made; and I do hereby authorize and request the Commissioner of Patents of the United States of America to issue any and all Letters Patent of the United States of America which may be granted upon the said applications above referred to, or

any of them, or upon said invention or any part thereof, to Keystone Driller Company, aforesaid and I hereby agree for myself and for my heirs, executors and administrators, to execute without further consideration any further lawful documents and any further assurances, and any re-issue, renewal, or other application for Letters Patent that may be deemed necessary by the assignee herein named, fully to secure to the said assignee my interest as aforesaid in and to said invention or any part thereof, and in and to said several Letters Patent or any of them.

And I do hereby covenant for myself and my legal representatives and agree with Keystone Driller Company, its successors and assigns that I have granted no license to make, use or sell the said invention, that prior to the execution of this deed my right, title and interest in the said invention had not been encumbered, that I then had good right and title to sell and assign the same and that I have not executed and will not execute any instrument in conflict herewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this first day of Jan'y A. D. 1927.

(Seal) ROBERT REX DOWNIE.

COUNTY OF BEAVER,
STATE OF PENNSYLVANIA.

On this first day of Jan'y A. D. 1927 appeared the above-named Robert Rex Downie personally known to me, and known by me to be the one who executed the foregoing instrument, and acknowledged the same to be his free act and deed, before me,

CHAS. THEO. SMITH,
Notary Public.

Commission Expires March 13, 1927.

Recorded Transfers of Patents U. S. Patent Office Jan. 3, 1927. Liber Y128 page 256.

THOMAS E. ROBERTSON,
Commissioner of Patents.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

Received and Recorded on the 27th day of June, 1921 in Liber X113, page 297 of Transfers of Patents.

IN TESTIMONY WHEREOF, I have caused the seal of the Patent Office to be hereunto affixed.

Exd. G. S. THOMAS E. ROBERTSON,
(Seal) *Commissioner of Patents.*

ASSIGNMENT BEFORE PATENT.

WHEREAS, I, Robert Rex Downie, of Beaver Falls, County of Beaver and State of Pennsylvania have invented certain Improvements in Excavating Machines for which I am about to make application for Letters-Patent of the United States.

AND WHEREAS, Keystone Driller Company a corporation of Pennsylvania, located and doing business at Beaver Falls, Penna., is desirous of acquiring an interest therein, and in the Letters-Patent to be obtained therefor:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, BE IT KNOWN That for and in consideration of One Dollar to me in hand paid, the receipt whereof is acknowledged, I have assigned, sold and transferred, and by these presents do hereby assign, sell, and transfer unto the said Keystone Driller Company, all of the right, title, and interest in and to the said invention, as set forth in the specification executed by me, this day preparatory to obtaining Letters-Patent therefor; and I hereby request the Commissioner of Patents to issue the Letters-Patent to the said Keystone Driller Company in accordance with this assignment.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my seal, this 22nd day of June, 1921.

ROBERT REX DOWNIE. [Seal]

In presence of

CHAS. THEO. SMITH,
JAMES D. BOWSER.

STATE OF PENNSYLVANIA,
COUNTY OF BEAVER, ss.

On this 22nd day of June, 1921, before me, personally appeared the above-named Robert Rex Downie who acknowledged that he executed the foregoing assignment for the uses and purposes therein mentioned.

CHAS. THEO. SMITH,
(Seal) *Notary Public.*

Commission Expires March 9, 1923.

ASSIGNMENT BEFORE PATENT.

WHEREAS, I, Robert Rex Downie, of Beaver Falls, County of Beaver and State of Pennsylvania have invented certain Improvements in Excavating Machines for which I am about to make application for Letters-Patent of the United States.

AND WHEREAS, Keystone Driller Company a corporation of the State of Pennsylvania, doing business at Beaver Falls, Pennsylvania, is desirous of acquiring an interest therein, and in the Letters-Patent to be obtained therefor:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, BE IT KNOWN That for and in consideration of One Dollar to me in hand paid, the receipt whereof is acknowledged, I have assigned, sold and transferred, and by these presents do hereby assign, sell, and transfer unto the said Keystone Driller Company, all of the right, title, and interest in and to the said invention, as set forth in the specification executed by me, this day preparatory to obtaining Letters-Patent therefor; and I hereby request the Commissioner of Patents to issue the Letters-Patent to the said Keystone Driller Company in accordance with this assignment.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my seal, this 26th day of January, 1925.

ROBERT REX DOWNIE. [Seal]

In presence of

R. F. PATTERSON,
JAMES D. BOWSER.

STATE OF PENNSYLVANIA,
COUNTY OF BEAVER, SS.

On this 26th day of January, 1925, before me, personally appeared the above-named Robert Rex Downie who acknowledged that he executed the foregoing assignment for the uses and purposes therein mentioned.

CHAS. THEO. SMITH,
(Seal) *Notary Public.*

Commission Expires March 13, 1927.

Received and Recorded in U. S. Patent Office Jan. 28, 1925. In Liber J-123, Page 514 of Transfers of Patents.

THOMAS E. ROBERTSON,
Exd. E. H. G. *Commissioner of Patents.*

Liber C129 page 200

To All Whom It May Concern:

WHEREAS, Leroy P. Clutter, formerly of Beaver Falls, Pennsylvania, now of R. D. No. 4 Uniontown, Pennsylvania, did obtain letters patent of the United States for an alleged new and useful improvement in Ditching or Excavating Machines, which letters patent bear date the 30th day of September, 1919, and are numbered one million three hundred and seventeen thousand four hundred and thirty-one (1,317,431), and

WHEREAS, the Keystone Driller Company, a corporation, whose place of business and principal office is located at Beaver Falls, Pennsylvania, is desirous of acquiring said patent,

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of one dollar in hand paid, the receipt of which is hereby acknowledged, I, the said Leroy P. Clutter, have assigned, sold and set over, and do by these presents assign, sell and set over unto the said Keystone Driller Company all the right, title and interest I have in and to the said letters patent and the invention thereby secured.

The same to be held and enjoyed by the said Keystone Driller Company for its own use and behoof and for the use and behoof of its successors and assigns, to the full end of the term for which said letters were granted, as fully and entirely as the same would have

been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal, this 17th day of May, 1921.

LEROY P. CLUTTER. (Seal)

Signed, sealed and delivered in presence of

CHAS. THEO. SMITH.

STATE OF PENNSYLVANIA,
COUNTY OF BEAVER, SS.

On this 17th day of May, 1921, before me personally appeared the above named Leroy P. Clutter, who acknowledged that he executed the foregoing assignment for the uses and purposes therein mentioned.

CHAS. THEO. SMITH,
(Seal) *Notary Public.*

Commission Expires March 9, 1923.

Recorded Transfers of Patents U. S. Patent Office Sep. 23, 1926. Liber C129 page 200.

THOMAS E. ROBERTSON,
Commissioner of Patents.

PLAINTIFF'S EXHIBIT NO. P-22.

Letters of Notice to the Osgood Company.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

August 26, 1929.

Edwin P. Corbett, Esq.,
820 Huntington Bank Bldg.,
Columbus, Ohio.

Re: File 2747

Dear Sir:—

I have never heard from you further, following your letter of June 26, 1929, stating that you will let me hear

from you promptly relative to the Osgood Company's infringement of patents 1,709,466 and 1,716,432.

Very truly yours,

PES:B PHILIP E. SIGGERS.

EDWIN P. CORBETT
ATTORNEY AT LAW
820 Huntington Bank Building
Columbus, Ohio

Adams 6041

June 26, 1929.

Messrs. Siggers & Adams,
918 F Street, N. W.,
Washington, D. C

Gentlemen:

Your letter of the 4th inst. charging the Osgood Company with infringement of patent No. 1,709,466 of April 16, 1929 and also charging infringement of the patent to issue on June 11, 1929 has been turned over to me for consideration. I have obtained a copy of patent No. 1,709,466. I have also obtained a copy of patent No. 1,716,432 which seems to be the only one issued on June 11 to your client and which, I assume, is the patent you refer to. The first of these patents has twenty-one claims and the second of these patents has eighteen claims. Possibly you can tell me which claims you consider infringed by the Osgood structure. I imagine it would save me considerable labor and might hasten my reply.

In any event, I shall let you hear from me promptly but I will appreciate it if you can designate the claims.

Very truly yours,

EPC:B E. P. CORBETT.

(Siggers & Adams, June 27, '29, Washington, D. C.)

THE OSGOOD COMPANY
Manufacturers of
EXCAVATING MACHINERY
High Grade Steel Castings
Marion Ohio, U. S. A., June 7, 1929.

Siggers & Adams,
918 F. Street, N. W.,
Washington, D. C.

Gentlemen:—

Acknowledging receipt of yours of June 4th, we have referred this letter to our Attorney for attention.

Yours very truly,

THE OSGOOD COMPANY,
M. C. McNEIL.

MCM:FL

(Siggers & Adams, June 10, '29, Washington, D. C.)

REGISTRY CARD

Post Office Department
Official Business

Penalty for Private Use to Avoid Payment of Postage, $300.

Registered Article
No. 299753
Insured Parcel
No. .....

Postmark of Delivering Office and Date of Delivery

(Marion, Ohio, June 7, 11:30 A. M., 1929)

Return to Siggers & Adams.

(Name of Sender)

Street and Number,
or Post Office Box, 918 F St., N. W.,

Washington, D. C.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

The Osgood Co.
(Signature or name of addressee.)
C. L. Monson.
(Signature of addressee's agent.)
Date of delivery, ..., 192

RECEIPT FOR REGISTERED ARTICLE NO. 299753

....., 192
(Date.)

15 fee paid. 1 class postage paid.
From Siggers & Adams, 918 F St., N. W.
Addressed to The Osgood Co., Marion Ohio.
Accepting employee will place initials in space below, indicating restricted delivery.
Return receipt fee ✓ Special delivery fee .....

Delivery restricted to addressee { in person ..... / in order .....

152 Postmaster, per Weighton.

(Postmark—Washington, D. C. (G Street Sta.) Registered.)

THE OSGOOD CO.,
Marion, Ohio.
June 4, 1929.
File 1159

Gentlemen:—

Your infringement of patent No. 1,709,466 which issued April 16, 1929, to our client, Keystone Driller Company, has been brought to our attention. You are requested to desist immediately, and to render an accounting. Failing this, we shall bring a supplemental bill of complaint to include the above patent in the pending suit.

Constructive notice of this patent has been given by the patent plates which are attached to all Keystone Driller machines.

There is also a patent on a side rake tooth, to issue June 11, which, in our opinion, will be infringed if you continue your present activities. We shall send you a

separate notice later, unless convinced that you will thereafter respect our client's patents.

Very truly yours,

PES:B

SIGGERS & ADAMS.

THE OSGOOD COMPANY
Manufacturers of
Excavating Machinery

Marion, Ohio, U. S. A.
November 21, 1927.

Siggers & Adams,
National Union Bldg.,
918 F Street, N. W.,
Washington, D. C.

Gentlemen:—

Your letter of November 10th was evidently written without a full understanding of the facts before you.

We are not infringing any patent but are building according to drawings, records and patterns developed long before the Keystone Driller Company even thought of such a piece of apparatus. Accordingly we do not see where we are interested in the subject matter of your letter.

Mr. Sauer did not appear as a representative of this Company but as an entirely disinterested party.

Very truly yours,

THE OSGOOD COMPANY
M. C. MCNEIL, *Treas.*

MCM:FL

(Envelope)

Return After Five Days To
OSGOOD
Marion, Ohio, U. S. A.

(Marion, Ohio. Nov. 21, 1927. 6—P.M.)
(Cancelled United States Postage 2 Cent Stamp)

SIGGERS & ADAMS
National Union Bldg.
918 F. Street N. W.
Washington D. C.

REGISTRY CARD

Post Office Department
Official Business

Registered Article
No. 870649
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Penalty for Private Use
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Postmark of Delivering
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(Marion, Ohio. Nov. 12, 1927. 6—P.M.)

Return to Sigger-Adams
(Name of Sender)
Street and Number, or Post Office Box, 918 F St. N. W.
Washington, D. C.

Not at 918 F. N. W. 115

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

THE OSGOOD CO.
(Signature or name of addressee.)

CYRIL MONSON
(Signature of addressee's agent.)

Date of delivery, 11/12, 1927

RECEIPT FOR REGISTERED ARTICLE NO. 870649

Registered at the Post Office indicated in Postmark
Fee paid 15 cents Class postage 1
Return Receipt fee 3 Spl. Del'y fee ....
Delivery restricted to addressee:
in person ...., or order ....

Accepting employee will place his initials in space indicating restricted delivery.

Postmaster, per M

(Postmark—Washington, D. C. (.... Street Sta.)
Registered.)

PLAINTIFF'S EXHIBIT NO. P-23.

Letters of Notice to General Excavator Co.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

June 10, 1929.

The General Excavator Company,
Marion, Ohio.

Atten: Mr. Edgar Barnhart.

Gentlemen:—

We have your letter of June 7, 1929.

The number of the patent to issue June 11th to the Keystone Driller Company is 1,716,432.

Very truly yours,

SIGGERS & ADAMS.

THE GENERAL EXCAVATOR COMPANY
Marion, Ohio, U. S. A.
GENERAL

June Seventh 1929

Siggers & Adams,
National Union Bldg.,
918 F. Street, N. W.,
Washington, D. C.

Gentlemen:—

This will acknowledge your letter of June 4th, File Reference 1159, on the subject of patent No. 1,709,466 issued April 16, 1929 to the Keystone Driller Company.

The matter has been referred to our attorney, Mr. Edward L. Reed, 1165 Reibold Building, Dayton, Ohio and will have his careful consideration.

Will you please advise us at your early convenience the number of the patent which you say is to issue June 11th.

Yours very truly,

THE GENERAL EXCAVATOR COMPANY,
EDGAR BARNHART,
Plant Manager.

EWB:RA

(Siggers & Adams, June 10, 1929, Washington, D. C.)

REGISTRY CARD

Post Office Department
Official Business

Penalty for Private Use to Avoid Payment of Postage, $300.

Registered Article No. 299754
Insured Parcel No. .....

Postmark of Delivering Office and Date of Delivery

(Marion, Ohio. Jun. 7, 1929. 4:30 P.M.)

Return to Siggers & Adams
(Name of Sender)
Street and Number, or Post Office Box, 918 F St. N. W.
Washington, D. C.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

GENERAL EXCAVATOR.
(Signature or name of addressee.)

J. P. BAKER.
(Signature of addressee's agent.)

Date of Delivery, 6/7, 1929.

RECEIPT FOR REGISTERED ARTICLE NO. 229754

15 fee paid. 1 class postage paid. ....., 192
(Date)

From Same
Addressed to The General Excavator, Marion, Ohio.

Accepting employee will place initials in space below, indicating restricted delivery.

Return receipt fee ✓ Special Delivery fee .....
Delivery restricted to addressee { in person ..... or order .....

Postmaster, per WEIGHTON.

(Washington, D. C. (..... Street Sta.) Registered Jun. 5, 1929)

June 4, 1929

The General Excavator Co.,
Marion,
Ohio.

Re: File 1159

Gentlemen:—

Your infringement of patent No. 1,709,466 which issued April 16, 1929 to our client, Keystone Driller Company, has been brought to our attention. You are requested to desist immediately, and to render an accounting. Failing this, we shall bring a supplemental bill of complaint to include the above patent in the pending suit.

Constructive notice of this patent has been given by the patent plates which are attached to all Keystone Driller machines.

There is also a patent on a side rake tooth, to issue June 11, which, in our opinion, will be infringed if you continue your present activities. We shall send you a separate notice later, unless convinced that you will thereafter respect our client's patents.

Very truly yours,

PES:B

SIGGERS & ADAMS.

(Copy)

January 31, 1929.

General Excavator Company,
Marion, Ohio.

Gentlemen:

This will follow the letter of January 24, 1929 written to you by Siggers & Adams from Washington, D. C., and is written in connection with that letter and also the letter of Philip E. Siggers of April 11, 1928 to you. This letter is, as those letters were, written at the direction of the Keystone Driller Company and is for the purpose of advising you that you are infringing the following patents owned by the Keystone Driller Company:

Clutter No. 1,317,431
Downie No. 1,511,114
Downie No. 1,543,250

and further to advise you that we will shortly file a Bill of Complaint against you asking for preliminary injunction, enjoining you from infringing the above named patents which, as Siggers & Adams wrote you, have been

sustained by His Honor Judge Jones in the United States District Court for the Northern District of Ohio, unless in the meantime you agree to discontinue your infringement and make suitable settlement for past infringement.

Very truly yours,

#:K (Signed) F. O. Richey.

January 24, 1929

The General Excavator Co.,
Marion,
Ohio.

Re: File 1159

Gentlemen:—

We are writing merely to inform you of the decision of the District Court of the United States for the Northern District of Ohio, Eastern Division, at Cleveland, upholding the validity of the following claims of patents owned by the Keystone Driller Company:

Claim 4 of Clutter patent	1,317,431
Claims 6 and 7 of Wagner et al	1,476,121
Claims 1-14 incl. of Downie	1,511,114
Claims 1-10 incl. of Downie	1,543,250

All of these claims were held to be infringed by Byers Machine Company. None of the claims sued on was held invalid.

A copy of the court's decision may be obtained from the clerk of the court at Cleveland, from this office or from the Keystone Driller Company, Beaver Falls, Pa.

Very truly yours,

PES:B Siggers & Adams.

October 3, 1928

Edwin P. Corbett, Esq.,
820 Huntington Bank Bldg.,
Columbus,
Ohio.

Re: File 1159 General

Dear Sir:—

We have your letter of October 1 stating that you have taken up the matter of infringement, and also requesting information about the allowed claims in pending applications owned by the Keystone Driller Company.

We shall be glad to give you a copy of these allowed claims, as soon as we have been furnished with a blueprint or photograph showing clearly your present construction of scoop. Naturally we are in doubt about infringement of some of the claims which we have in mind, although we are certain that infringement exists; and we cannot give you a complete list of all claims infringed, without having exact information about what your client is manufacturing. The photographs now in our possession are from one of the General Excavator Company's catalogs and do not show certain details of construction which we should know about.

Very truly yours,

PES:B SIGGERS & ADAMS.

EDWIN P. CORBETT
Attorney at Law
820 Huntington Bank Building
Columbus, Ohio
Adams 6041

October 1, 1928.

Messrs. Siggers & Adams,
National Union Building,
918 F Street, N. W.,
Washington, D. C.

Gentlemen:

Your letter of the 19th instant and your previous letters to the General Exeavator Company of Marion, Ohio, have been turned over to me for consideration. I shall take up the question of your charge of infringement of the two patents named in your letter of April 11, 1928, and shall let you hear from me in the course of a couple of weeks.

Regarding the matter of the alleged infringement by my clients of "numerous allowed claims in pending applications owned by the Keystone Driller Company," I would suggest that you let me know what these allowed claims are so that I may advise my clients intelligently about this phase of the situation.

Very truly yours,

EPC:L E. P. CORBETT.

(Siggers & Adams. Oct. 3, '28. Washington, D. C.)

THE GENERAL EXCAVATOR COMPANY
Marion, Ohio, U. S. A.
GENERAL

October First 1928

Siggers & Adams,
National Union Building,
918 F Street, N.W.,
Washington, D. C.

Attention: Mr. Philip E. Siggers

Subject: Your letter September 19th, 1928,
your file 1159—GENERAL

Gentlemen:—

This is to acknowledge your letter of September 19th, 1928, relative to alleged infringement of Keystone Driller Company's patent.

We have retained Mr. Edwin T. Corbett, 17 South High Street, Columbus, Ohio, as our attorney, and he will write you further on this subject within the next week or so.

Yours very truly,

THE GENERAL EXCAVATOR COMPANY,
EDGAR W. BARNHART,
Plant Manager.

EWB:NL
No. 3

(Siggers & Adams. Oct. 3, '28. Washington, D. C.)

RECEIPT FOR REGISTERED ARTICLE NO. 877828

Registered at the Post Office indicated in Postmark
Fee paid 15 cents Class postage 1
Return Receipt fee 3 Spl. Del'y fee ....
Delivery restricted to addressee:
in person ...., or order ....

Accepting employee will place his initials in space indicating restricted delivery.
Postmaster, per W

(Washington, (F Street Sta.) D. C. Registered.
Sep. 19, 1928.)

REGISTRY CARD

Post Office Department
Official Business

Registered Article
No. 877828
Insured Parcel
No. .....

Penalty for Private Use
To Avoid Payment of
Postage, $300.
Postmark of Delivering
Office
And Date of Delivery

(Marion, Ohio, Sep. 21, 1928. 4:30 P. M.)

Return to Siggers & Adams,
(Name of Sender)
Street and Number, or Post Office Box, 918 F
Washington, D. C.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

GENERAL EXCAVATOR CO.
(Signature or name of addressee.)
J. B. BAKER
(Signature of addressee's agent.)

Date of delivery, 9/21, 1928.

September 19, 1928

General Excavator Company,
Marion,
Ohio.

Re: File 1159—General

Gentlemen:—

We have had no word from you since April 17 about the infringement of the Keystone Driller Company's patents. Within the past few days, our attention has been called to the fact that you infringe not only the two patents named in our letter of April 11, 1928 but also numerous allowed claims in pending applications owned by the Keystone Driller Company, and covering the manner of connecting the ditcher stick to the scoop, the improved side rake teeth and the manner of connecting them to the scoop, and various other features originated by the Keystone Driller Company. Because of your refusal to respect our client's rights, the situation has become in-

tolerable. You may rely upon us to take aggressive steps if your infringement persists.

Very truly yours,

PES:B PHILIP E. SIGGERS.

THE GENERAL EXCAVATOR COMPANY
Marion, Ohio, U. S. A.
GENERAL

April Seventeenth 1928

Siggers & Adams,
918 F Street, N. W.,
Washington, D. C.

Gentlemen:—

Your letter of April 11th. We went over your patents very carefully prior to the time we started building machines and were advised that they did not infringe. However, I am again taking the matter up with our patent attorney that he make a search and upon receipt of advice from him we will confer with you further.

Yours truly,

THE GENERAL EXCAVATOR COMPANY,
C. A. OWENS.

(Siggers & Adams. Apr. 19, '28. Washington, D. C.)

RECEIPT FOR REGISTERED ARTICLE NO. 875254

Registered at the Post Office indicated in Postmark
Fee paid 15 cents Class postage 1
Return Receipt fee 3 Spl. Del'y fee ....
Delivery restricted to addressee:
in person ...., or order ....

Accepting employee will place his initials in space indicating restricted delivery.
Postmaster, per M.

(Washington, (F Street Sta.) D. C. Registered.
Apr. 11, 1928.)

REGISTRY CARD

Post Office Department
Official Business

Penalty for Private Use
To Avoid Payment of
Postage, $300.

Registered Article
No. 875254
Insured Parcel
No. .....

Postmark of Delivering
Office
And Date of Delivery

(Marion, Ohio. April 12, 1928. 3:30 P.M.)

Return to Siggers-Adams
(Name of Sender)

Street and number, or Post Office Box, 918 F St. N. W.
Washington, D. C.

(Siggers & Adams. Apr. 13, '28. Washington, D. C.)

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

GENERAL Ex. Co.
(Signature or name of addressee.)

D. F. FOREMAN
(Signature of addressee's agent.)

Date of delivery, 4/12, 1928.

April 11, 1928

The General Excavator Company,
Marion,
Ohio.

Re: File 1159—General Excavator

Gentlemen:—

This is to notify you formally of your infringement of the following patents owned by the Keystone Driller Company:

1,317,431,	Clutter,	September 30, 1919
1,511,114,	Downie,	October 7, 1924

For sometime the Keystone Driller Company has notified the public of its rights under the above patents

by attaching to each of its machines metal plates bearing the dates (and recently the numbers also) of said patents, as well as of other patents owned by it. As a member of the public, you have thus received constructive notice of the rights of the Keystone Driller Company arising from the issue of the above identified patents. Furthermore, Keystone Driller machines bearing patent notices have been exhibited at the Chicago road shows for a number of years past.

As you have been informed, the Keystone Driller Company is now prosecuting a suit for infringement of the above-named patents against the Byers Machine Company in the United States District Court in Cleveland. It has also filed suits against the Bay City Dredge Works in the District Court in Bay City. Unless you are prepared to make an accounting for past infringement, or unless you enter into some amicable agreement with the Keystone Driller Company, a suit for infringement may be brought against you to recover profits or damages and to obtain injunctive relief.

A written response to this letter is requested.

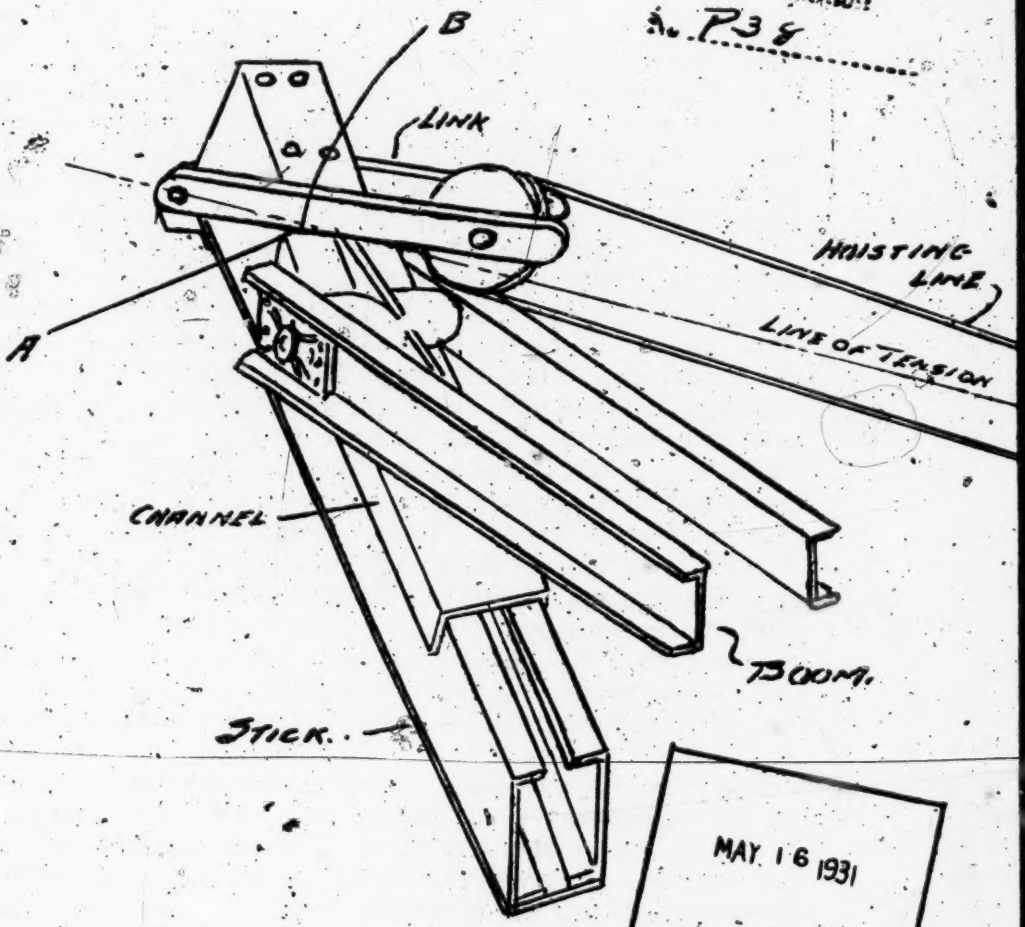
Very truly yours,

PES:B PHILIP E. SIGGERS.

964-965

Patented Feb. 2, 1909

A. P38



MAY 16 1931

OSGOOD IN CONNECTION WITH
2ND DONNIE PATENT.

PLAINTIFF'S EXHIBIT NO. P-45.

Letter, April 12, 1929, Keystone Driller Co. to G. E. Wagner.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

April 12, 1920.

Mr. G. E. Wagner,
870 Bloomfield Avenue, Akron, Ohio.

Dear Sir:

With respect to your proposition that we offer and give you something of value to conceal or suppress any report of any evidence which you claim to exist with respect to our ditching machine patent litigation, we advise you that we will neither offer nor give you anything, nor be a party to your proposition to suppress or conceal any evidence in this or any other law suit.

We understand you refer to the reports of the alleged evidence of the use of a ditcher at Joplin, Missouri, and will say that we have been all over this matter and are advised and convinced such reports are immaterial to any issue in the case. We knew of these reports before the suit against the Byers Company was started. The whole matter was submitted to our attorneys before this suit was started and has since been submitted to other attorneys, and all have advised us that the alleged evidence, if the most exaggerated reports thereof were true, is immaterial to any issue in the case. We were so advised before the suit was started and have since been advised to the same effect. We have no objections to your disclosing what you know about this matter to the Byers Company or its attorneys, or to anyone else.

As you know Burn Clutter some time ago approached us and we refused him for the same reasons as we are giving to you. Nor will we be any party to your proposition to induce Burn Clutter to conceal or suppress any knowledge he may have or thinks he may have regarding this matter.

We have written B. C. Clutter similarly to the above but since we do not know his street address we enclose letter for him herewith. Will you please fill in the address and mail it or else deliver same to him.

Yours truly,

KEYSTONE DRILLER COMPANY,
J. VALE DOWNIE,
President.

JVD.FB

PLAINTIFF'S EXHIBIT NO. P-46.

Letter, April 12, 1929, Keystone Driller Co. to B. C. Clutter.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

April 12, 1929.

Mr. B. C. Clutter,
Akron, Ohio.

Dear Sir:

With respect to your proposition that we offer and give you something of value to conceal or suppress any report of any evidence which you claim to exist with respect to our ditching machine patent litigation, we advise you that we will neither offer nor give you anything, nor be a party to your proposition to suppress or conceal any evidence in this or any other law suit.

We understand you refer to the reports of the alleged evidence of the use of a ditcher at Joplin, Missouri, and will say that we have been all over this matter and are advised and convinced such reports are immaterial to any issue in the case. We knew of these reports before the suit against the Byers Company was started. The whole matter was submitted to our attorneys before this suit was started and has since been submitted to other attorneys, and all have advised us that the alleged evidence, if the most exaggerated reports thereof were true, is immaterial to any issue in the case. We were so advised before the suit was started and have since been advised to the same effect. We have no objections to your disclosing what you know about this matter to the Byers Company or its attorneys or to anyone else.

As you know Burn Clutter some time ago approached us and we refused him for the same reasons as we are giving to you. Nor will we be any party to your proposition to induce Burn Clutter to conceal or suppress any knowledge he may have or thinks he may have regarding this matter.

Yours truly,

KEYSTONE DRILLER COMPANY,
J. VALE DOWNIE,
President.

JVD.FB

PLAINTIFF'S EXHIBIT NO. P-73.

Affidavit of Herbert Wallower, date May 8, 1925.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

Date May 8, 1925.

TO WHOM IT MAY CONCERN:—

I, Herbert Wallower, now residing in Baxter Springs, Kansas, was the active superintendent of the Orange Contracting Company of Joplin, Missouri, which firm did the basement excavating for the Joplin Supply Company building on Third Street, Joplin, Missouri. The job was done in the winter of 1919-1920.

We used a Keystone excavator for digging and loading the spoil. We first used a skimmer scoop, but were compelled to change to the ditcher in order to get sufficient elevation and reach to bring the spoil from the bottom of the hole yet without running the conveyances down onto the floor of the excavation. In using the then standard Keystone Ditcher we encountered difficulty in discharging the sticky material from the scoop.

It occurred to me that the dumping of material would be facilitated by use of a scoop with a pivoted bottom, and that such scoop could be attached to the lower end of the stick. Accordingly, under the supervision of B. R. Clutter, and after securing from the Keystone Driller Co. a print of the body plate of the Keystone skimmer scoop we had two scoops made for use in the manner described above.

The two scoops were built concurrently, and the principal reason for building two instead of one for trial was that we desired to have one scoop as a substitute for the job immediately before us, as a fall-back in case of breakage. Also, as contributing to the decision to make two scoops instead of one there was the fact that we owned two Keystone machines and therefore expected to have use for two scoops in case the idea should prove satisfactory; and the expected saving in trouble and expense due to making the scoops at the same time appeared to more than offset the risk of finding the design impracticable.

Both of these scoops were installed on the machines at the Joplin Supply Co. excavation. They were operated on this job by B. R. Clutter for about six weeks. Both scoops were tried on trench work for about six weeks.

The falling bottom was found to be of advantage in discharging sticky clay but not of sufficient advantage to warrant our continuing the use of the scoops in view of the care and repairing required for operation. The latch mechanism was never reduced to a positively-acting and properly protected form.

In March or April 1920 use as ditchers was abandoned and both scoops were converted into skimmers; and at that time as many of the regular Keystone ditcher attachment parts as were undamaged by the experimentation were returned to the Keystone Driller Company for credit.

Signed H. H. WALLOWER.

Affidavit:—Sworn to and subscribed before me this 8th day of May, 1925.

F. E. ELLISON,
Notary Public.

(Seal)

My commission expires Sept. 13, 1928.

From the desk of
F. B. Ransom

F. E. ELLISON,
Quapaw, Okla.

DEFENDANT'S EXHIBIT NO. 7.

Letter from Oliver Brothers, New York, Oct. 31, 1914, to the Mahoney Railroad Ditching Machine Co., Vincennes, Indiana.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965].

OLIVER BROTHERS PURCHASING COMPANY,
71-73 Murray Street,
New York,

Oct. 31st, 1914.
A. C.

Mahoney Railroad Ditching Machinery Co.,
Vincends, Ind.

Gentlemen:

We have an inquiry for a thousand or more Ditching Machines and if you are in a position to furnish such Machines, would suggest that you send us illustrations or catalogue together with prices of same.

In quoting, please state cash discount and make your price delivered at ship's side, New York.

We believe it would be necessary to have a rugged type of Machine, one that would do heavy work in different kinds of earth, and as we judge these machines would be used for digging Trenches for the Armies in Europe, we would want a Machine which would dig a ditch or trench and throw the earth up on one side which could of course be used as earth works.

It would be necessary to have Machines which could be pulled along by a tractor or engine. The parties desiring these Machines already have the engines and would merely require the machines to make the ditch or trench.

You can understand that it would be necessary to make your quotation as clear as possible and also as brief as possible so as to avoid unnecessary complications.

In quoting state how many Machines you could furnish per week, how soon you could make the first shipment, weight of Machines, whether necessary to have an expert to put them together or not, what provision would be necessary for repair parts. In fact, cover the situation as clearly and briefly as possible so that the placing

of orders will not be held up on account of any technical points to be settled.

Yours very truly,

OLIVER BROTHERS PURCHASING CO.
MD ALBERT CATTERALL.

P. S. If you are not in a position to furnish Machines indicated above, possibly you will favor us by suggesting the right people to address.

DEFENDANT'S EXHIBIT NO. 8.

Answer of Mahoney Railroad Ditching Machine Co. to letter from Oliver Brothers, dated Oct. 31, 1914.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

November 1,

Oliver Brothers Purchasing Company,
71-73 Murray Street,
New York City.

Gentlemen:

With reference to your valued inquiry of October 31st, and to our reply to same of even date in which we give you all the particulars of the Mahoney Ditching Machine, we beg to advise you that the prices contained therein carry a commission of ten percent. (10%) for your goodselves.

We expect to have one of these machines in operation in the vicinity of New York within the next month, so that you will be able to call and inspect same and see the work which this outfit is capable of performing. This fact we believe should be of valuable assistance to you in securing an order, since there will be absolutely no ques-

tion as to the machine's being able to do the work intended.

Regarding the question of shipment, in case of an order for a considerable number being placed at one time, we beg to advise you that we have arranged with one of the largest manufacturers in the country to produce these machines for us, and we would therefore have their guarantee behind ours to cover our promise of shipment.

The photograph attached to our proposition shows one of these machines operating under conditions similar to those which you specify. You can therefore, assure your clients in England that they would be buying a machine which has been tried out and which is proving satisfactory in every respect.

Thanking you for the inquiry, and wishing you success in securing the order, we remain,

Very truly yours,

THE MAHONEY RAILROAD DITCHING MACHINE CO.

CAB/M

DEFENDANT'S EXHIBIT NO. 17.

Receipt for hospital expenses of L. Barekman, dated July 24, 1913, at Vincennes, Indiana, signed J. P. Ramsey.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

Vincennes, Ind. July 24, 1913.

Received from Mr. Presnell, for L. Barekman one hundred and forty dollars for Hospital. 20—Dr. Held & Benham 20 Dr. Ramy 100—.

$140.00 J. P. RAMSEY.

DEFENDANT'S EXHIBIT NO. 24

U. S. Patent No. 1,317,431, Sept. 30, 1919, to Leroy P. Clutter, for Ditching or Excavating Machine.

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been reproduced hereinbefore as Plaintiff's Exhibit No. P-1, the same is omitted at this point to avoid duplication. (See Page 91 of Exhibits, Vol. III.)

DEFENDANT'S EXHIBIT NO. 27.

Original letter on Keystone Driller Company's stationery, dated Feb. 20, 1926, addressed to B. R. Clutter, Lakewood, N. J., and signed Rex Downie.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

KEYSTONE DRILLER COMPANY

Beaver Falls, Pennsylvania

February 20, 1926.

Mr. B. R. Clutter,
Lakewood, New Jersey.

Dear Burn:—

I still want to know whether you used any side rake teeth fastened to the side walls of the scoop in your drop bottom experiments at Joplin in the early part of 1920. Now do not let your difficulty in corresponding amicably with Mr. Smith interfere with your correspondence with me on this subject. I would like very much to have this information within the next three or four days.

Surely the above question is plain: all I want now is the mere question of fact as to whether *any* side rake teeth were used, bolted or riveted to the sides or body of the scoop. I of course do not refer to side teeth attached to the bottom. Now just take the time to sit down and write me about this or I will not smoke any of your "Luckies" the next time I am in New Jersey.

Yours truly,

RRD.FB — REX DOWNIE.

Now doggone it Burn come across.

DEFENDANT'S EXHIBIT NO. 28.

Financial Statement between Wallower Brothers and C. A. Dieter, dated March 18, 1920, for excavation work on Joplin Supply Co. Bldg., Joplin, Missouri.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

March 18th, 1920.

WALLOWER BROS.
Financial Statement of Account
with
Mr. C. A. Dieter.

	Amt. our Pay roll	Work by C. A. Dieter for W. Bros.	Work by W. Bros. for C.A.D.	Over Paid
Dec. 19th, 1919	$395.61			
Dec. 24th, 1919	453.75			
Jan. 2nd, 1920	509.00			
Jan. 9th,	409.50			
Jan. 16th,	497.75			
Jan. 23rd,	557.00			
Jan. 30th,	664.35			
Feb. 6th,	737.25			
Feb. 13th,	760.50			
Feb. 20th,	564.75	604.75	40.00	
Feb. 27th,	636.50	638.00	15.00	27.00 13.50
Mar. 6th,	519.50	545.00	12.00	Deducted
Mar. 13th,	489.99	470.99	8.00	27.00
	$7,295.45			

Original contract,	5,636 yds @	$1.50	$8,454.00
Deductions for Cols.	84.22 "	1.50	126.33
			$8,327.67
Additional yardage	575.98 "	2.00	1,151.96
			$9,479.63

Labor:—March 17th, '19

Work for C. A. Dieter	$25.20	
Work for W. Bros. by C. A. Dieter.	20.00	$5.20

Supplies:		
Lanterns	6.00	11.20
		$9,490.83
Cash received from C. A. Dieter		7,295.45
~~Balance Due~~		$2,195.38
Coal purchased from C. A. Dieter		
4200# @ 5.50 per ton		11.55
Balance due		$2,183.83
Deduction for error in charging labor		15.80
		$2,168.03

Received payment in full as per above statement.

WALLOWER BROS.

H. H. WALLOWER.

DEFENDANT'S EXHIBIT NO. 32.

Fairbanks Steam Shovel Company's Shop Order No. 185, dated January 27, 1910.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

SPECIAL PRODUCTION.

THE FAIRBANKS STEAM SHOVEL COMPANY.

Machine No. 185. Order No. 185.
Size of machine 1.½ Yd. Dry Land. Date Jan. 27, 1910.
To be shipped to
Rio Grande Construction Co., Station San Benito,
County ..... State of Texas. On or before May 1, 1910.
Machine must be in operation .....190..

Please make the following:

One special 1.½ yard dryland excavator. Oil engine power 50 H.P. single cylinder type. Boom 40-ft.

Machinery to be mounted on endless webb tracks and self-propelling.

Oil engine electric plant, F. M. & Co., type, with generator, field rheostat, voltmeter, 6 large and 12 small lamps.

Wrenches, oil cans and tools necessary in operation of machine.

To be erected, tested and ready to ship.
Received in factory 1-27-10
Work completed

J. G. FAIRBANKS,
General Manager.

DEFENDANT'S EXHIBIT NO. 33.

Fairbanks Steam Shovel Company's Shop Order No. 188, March 9, 1910, for Back Action Shovel Shipped to George A. Castle, Polk County, Minnesota.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

SPECIAL PRODUCTION.

THE FAIRBANKS STEAM SHOVEL COMPANY.

Machine No. 188. Order No. 188.
Size of machine 1 yard Date March 9, 1910.
To be shipped to Geo. A. Castle, Station Melvin, County Polk, State of Minnesota, on or before May 5, 1910.

Machine must be in operation May 15, 1910.

Please make the following:

One dry land machine with one yard dipper. 35-ft boom.

Single cylinder (Fairbanks, Morse), gasoline engine of ample power.

Gasoline storage tank, 200 gallon capacity.

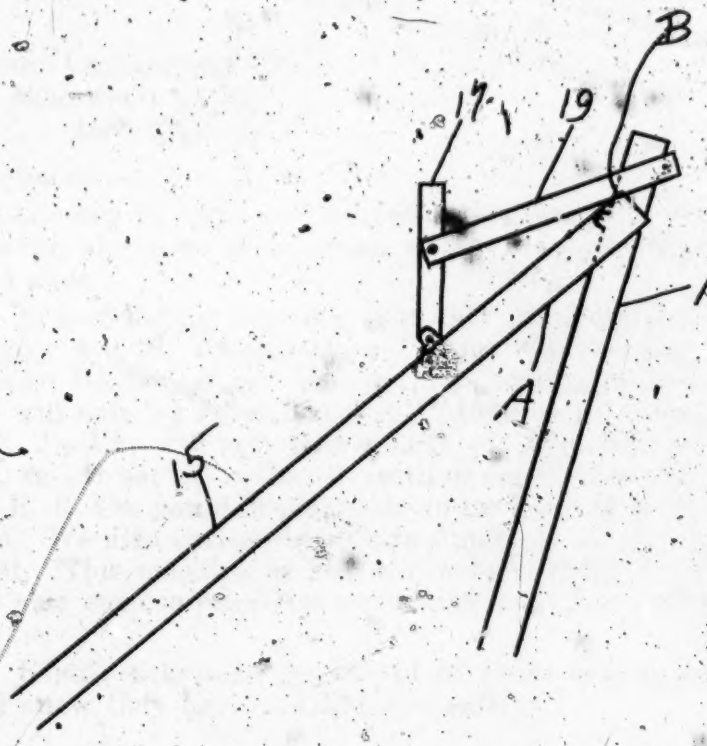
Electric light plant for 25 lights.

To be constructed so that it will travel ahead of the ditch and excavate toward itself. And to move forward under its own power and travel on endless web track.

To be erected, tested and ready to ship May 5, 1910,
Received in factory
Work completed

J. G. FAIRBANKS,
General Manager.

Mac



964-965
34

MAY 16 1931

Twice Size
Taken from Clutter Patent 1,317,431 - Sept. 30-1919

002
238

Twice Size

Taken from Clutter Patent 3,174,431 - Sept 30-1965

DEFENDANT'S EXHIBIT NO. 37.

(Sheet 1)

Letter, March 16, 1925, Keystone Driller Co. to Clutter Contracting Co., enclosing Bill of Lading and Invoice.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

KEYSTONE DRILLER COMPANY
170 Broadway
New York

March 16, 1925.

Clutter Contracting Co.,
Edgewood Court,
Lakewood, N. J.

Gentlemen:—

We beg to hand you herewith the following papers showing shipment of machine which you ordered some days ago:

Bill of lading showing that this shipment left our factory 3/9/25, consigned to Clutter Contracting Co., Lanoko Harbor, N. J. The outfit is coming forward as you will note on Penn. Car No. 925186, routed Penna. C. of N. J. You will note that a 36 ft. car was ordered and a 40 ft. car set in, so that in settling for the freight with the R. R. Co. you will please do so on basis of 36 ft. car rate. We also enclose invoice in duplicate as per agreement. This machine as you will note is Shop No. 4918. We also enclose envelope containing keys for switch on engine.

Kindly acknowledge receipt of these papers so we will know they have reached you safely.

Yours very truly,

KEYSTONE DRILLER COMPANY,
R. J. BOLE.

B/S
encls.

DEFENDANT'S EXHIBIT NO. 37.

(Sheet 2)

Invoice for Excavator from Keystone Driller Co. to Clutter Contracting Co., dated March 9, 1925.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

Our responsibility ceases upon delivery of goods to R. R. or Express Co., and claims for loss or damage in transit must be made on such carrying company. Tools or Machinery proving defective will be replaced, but claims for labor or damages will not be allowed. Claims must be made on receipt of goods. To secure replacement of defective goods they must be returned to us, all charges prepaid.

KEYSTONE DRILLER COMPANY

Beaver Falls, Pa., March 9, 1925.

Sold to Clutter Contracting Co.,
Our Order No. SS-1792
Branch Office No. ..... Lakewood,
Your Order Contract N. J.
Terms: Time

Shipped R.P.R. Co. N. J. to Lanoko Harbor, N. J.

Qty.	Description	
1	Model 4'25 Front Crawler Mounting Gasoline Driven Keystone Traction Excavator	$6825.00
1	5/8 yd. 6-roll Skimmer Scoop	300.00
1	3/4 yd. Dipper Scoop, only	250.00
1	36" Drop Bottom Ditcher Scoop and set of Attachments	315.00
1	1/2 yd. Clamshell with set Attachments	550.00
		$8240.00

Shop No. 4918.
P. R. R. Car 925186

DEFENDANT'S EXHIBIT NO. 37 - SHEET 3

Uniform Domestic Straight Bill of Lading adopted by Carriers in Official, Southern and Western Classification territory.

THIS MEMORANDUM

is an acknowledgment that a Bill of Lading has been issued and is now in the hands of the consignee, covering the property named herein, and is not a receipt, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described.

From KEYSTONE DRILLER COMPA

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said carrier (the word carrier throughout this contract shall be understood to mean any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

At BEAVER FALLS, PA. 3-9-25 192 Shipper's No.

Penna. Company Agent's No.

(Mail or street address of Consignee—for purposes of notification only.)

Consigned to Clutter Contracting Company

Destination Lenoke Harbor State of W.J. Co.

Route Penna.-C of N.J.

Car Initial Penn Co.

(Delivering Carrier) Car No. 100000

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
1	Model K-25 Keystone Traction Trench Excavator On Crawler			
1	Pioneer Cutter Bands			
1	Bundle Canopy Rods			
1	Bundle Curtain Poles			
2	Boxes Fittings & Curtains	2870#		
1	Boom & Pin	1470#		
1	6 Roll Skimmer Scoop	1555#		
	36' car ordered 40' car sent in			
	Damage $724			

3

3172.50

6.18

353

*If shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight." Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

KEYSTONE DRILLER COMPANY, Shipper, Per _____ Agt.

Permanent post-office address of shipper, BEAVER FALLS, PA., U. S. A.

DEFENDANT'S EXHIBIT NO. 38.

Keystone Driller Co. Letter to Mr. Burn Clutter, dated November 23, 1928.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

KEYSTONE DRILLER COMPANY
Beaver Falls, Pennsylvania

November 23, 1928.

Mr. Burn Clutter,
17 Edgewood Court,
Lakewood, N. J.

Dear Burn:

We have your letter of November 15th and are glad to see that you are still able to argue fluently. Writer has referred to our letter of February 16th with which we enclosed check for $476.00 and by the receipt of which you indicated your satisfaction with the amount of $952.00 as the contingent cash credit substituted for the original machine credit,—which in turn went astray because of our having to take the machine back.

Now the other half of the contingent cash credit was not to become payable until and unless our case should be satisfactorily decided by the end of 1928. No decision has been made as yet. The case drags for various reasons.

If your parts account had been in good shape writer would have no difficulty in securing general approval of these cash remittances, but the fact is the accounting department is being held out of a substantial parts bill which amounts to more than the contingent credit which you still have and which will become due in case the case is settled in accordance with our original deal by the end of 1928.

This leaves the writer nothing to do except point out that you owe us more than we would owe you even if the case were settled,—and that the case is not in fact settled. Hence we cannot say that we feel that there is anything due you under these circumstances.

Writer is sorry that we cannot do any better, but feels that we have no reason to actually exceed the spirit of the deal as made. (Instead we will sell you another machine some day, or Mr. Elmire and I will come down and bum another shore dinner the next time we are in Jersey, and we will stick Elmire for the smokes.)

Yours truly,

KEYSTONE DRILLER COMPANY,
REX DOWNIE.

RRD:FB

DEFENDANT'S EXHIBIT NO. 39.

Keystone Driller Co. letter to Mr. Burn R. Clutter, dated December 4, 1928.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

KEYSTONE DRILLER COMPANY
Beaver Falls, Pennsylvania

December 4, 1928.

Mr. Burn R. Clutter,
17 Edgewood Court,
Lakewood, N. J.

Dear Burn:

We have your remonstrance of November 28th and of course have read same carefully.

In trying to find out how or why we could have gotten so far apart in our ideas, after we thought the matter was so carefully arranged to avoid misunderstandings, etc. writer has carefully gone back over the correspondence and memorandum of agreement, and we think we have the explanation of the misunderstanding.

Here is a verbatim copy of Paragraph 4 of the agreement.

"It is agreed that the payment of one-fourth of the price of the machine and equipment named in second paragraph shall be suspended only until two years from date hereof, in anticipation of the possible occurrence of one of the contingencies named in the third paragraph, and that if at that time none of the contingencies named shall have occurred then the third paragraph hereof shall definitely lapse and the suspended one-fourth part of the price shall at once become due and payable in money."

We never thought that this paragraph could be misunderstood as meaning anything else than that the second quarter of the price of the machine could be held up by you for two years from the date of the deal on the chance that one of the three contingencies named in the third paragraph might occur and that if, by the end of two years not one of the above contingencies had occurred, then that second quarter of the price of the machine should be paid by you in money forthwith. We used the plain language "then the third paragraph hereof shall definitely lapse"; this cannot mean anything except that we would not wait any longer for the favorable settlement of the suit,—which was to be the reason for our issuing you the second quarter of credit.

Now possibly you read this fourth paragraph (after having forgotten our verbal explanation and repetition of it) as meaning that *we* should pay *you* a quarter part of the price of the machine in money, but the third paragraph, it seems to us, is very clear on the point that the Company was only to hold the offer open for two years, —"subject to the time limit contained in fourth paragraph hereof"—

Then of course we extended the time within which the contingencies might occur with effect until the end of 1928,—this by our letter of February 16th, 1928; but in the offer to so extend the time we also required substitution of $952.00 as the amount of the contingent credit instead of the original $1904.00 representing the second or contingent quarter of the price of the machine,—this in view of the fact that the machine had been re-possessed, and that therefore any consideration given by the Company under the provisions of third paragraph of the agreement would have to be a cash consideration instead of a credit against merchandise. The deal was really fulfilled, and the Company not required, under it, to do *anything* more, on April 11th, 1927,—that is two years from the date of the deal. By that time you had been given the primary and certain consideration of a quarter interest in the machine, and you had used up this quarter interest in wear and tear of the machine. We did not take back the machine until after its value had dropped considerably below the amount we had against it after crediting you with the amount you had paid in cash, and the amount of the first credit of $1904.00. So we take it that there is no possibility of your referring to the first quarter. And we have endeavored above to set right any misunderstanding there might have been in regard to the second quarter.

The status of the affair at this point is that if anyone of the three contingencies involved occurs before the end of 1928 there will be a payment of $476.00 due you from the Company; but your failure to have paid your account out causes Mr. Smith to object to the payment of this final amount even if it *should* become due, as it is common practice to offset one debt against another.

We trust that the above will clear the matter up, as we would regret having you dissatisfied in regard to fulfillment of the deal.

We are

Yours truly,

KEYSTONE DRILLER COMPANY,
REX DOWNIE.

RRD.FB

DEFENDANT'S EXHIBIT NO. 40.

Keystone Driller Co. Letter to Burn R. Clutter, dated December 17, 1928.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

KEYSTONE DRILLER COMPANY
Beaver Falls, Pennsylvania

December 17, 1928.

Mr. Burn R. Clutter,
17 Edgewood Court,
Lakewood, New Jersey.

Dear Burn:

Of course we do not like to have you call us all these hard names, but we do not see that we can do anything about it. At least the writer knows of nothing more to say beyond what is said in our letter of December 4th. We made a contract with you, and we believe that that contract has been or is being correctly and properly discharged. The consideration from you to us was that you conveyed to us whatever possible undetermined rights you might have or might come to have arising out of your Joplin experiment; also, as a part of the reconsideration, you made affidavit as to the abandonment of that experiment. The only circumstance which has arisen and which was not anticipated or provided for in our written deal was that even with the benefit of the $1904.00 credit you were not able to pay out on the machine, and hence that you have nothing at the present time to evidence the credit rendered as the first and certain portion of the consideration from the Company to you. However, our check for $476.00 dated on or about February 16, 1928, evidences the mutual agreement to substitute the $952.00 cash consideration for the original $1904.00 merchandise-credit consideration. The payment of that check represents a going beyond our obligation.

Yours truly,

KEYSTONE DRILLER COMPANY,
REX DOWNIE.

RRD.FB

247

963 963

Uniform Domestic Straight Bill of Lading adopted by Carriers in Official, Southern and Western Classification Territories, March 16, 1922

THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading. It is issued for the convenience and credit of the carrier and of the consignee of the property described in the Original Bill of Lading.

From KEYSTONE DRILLER COMPANY

The property described below is received in apparent good order except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

At BEAVER FALLS, PA. 7-14-25 192 Shipper's No. 98-1903

Penna. Company Agent's No.

(Mail or street address of Consignee—For purposes of notification only)

Consigned to Clutter Contracting Co.

Destination Tuckerton State of N.J. County of Ocean

Route Penna. c/o Tuckerton RR

(Delivering Carrier) Car Initial N.P. Car No. 68513

Cap. 70000 Wt. 29500

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
1	Model h-25 Keystone Traction Trench Excavator Gas Crawler			
h	Pieces Cutter Bands			
1	Bundle Canopy Rods			
1	Bundle Curtain Poles			
2	Boxes Fittings & Curtains	2870#		
1	Boom & Pin	1h70#		
1	6 Roll Skimmer Scoop	1555#		
	36' car ordered h1' car set in			
	Dunnage 150 h75#			

MAY 16 1931

Rim

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See condition 7 of conditions.)

(Signature of consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per (The signature here acknowledges only the amount prepaid.)

Charges advanced: $

*If the shipment moves between two ports by a carrier by water, the law requires that the Bill of Lading shall state whether it is "Carrier's or shipper's weight."
NOTE.—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

$ per

1451

KEYSTONE DRILLER COMPANY, Shipper, Per

Permanent post office address of shipper, BEAVER FALLS, PA., U. S. A.

Agent, Per

B 261 Form—The Standard Register Co., Dayton, Ohio

No 14012

American Manganese Steel Co.,
New Castle
Del.

Standardized invoice Adopted by the National Association of Purchasing Agents.

MAY 9 1922

This column reserved for use of Buyer

Shipper's Order No.	B-30294
Date Shipped	
Shipped from	
Shipped to	
Destination	
Shipping Weight	
Invoice date	4-26-22
Invoice No.	B 6240
F.O.B.	New Castle
Buyer's Order No.	B-342
Requisition No.	
Contract No.	4804
Car No. and Int.	
Via.	PRR 41490

P. A. Record No.
With order
F.O.B. point
Price
Calculations
Freight
Frt. Chgd. back
Rec'd by P. A.
Sent by P. A.
To auditor.
Inbox out.

CHECKED

INVOICE

APR 29 1922

Terms:

30 Days Net

THE BROWN HOISTING MACHINERY COMPANY
4103 St. Clair Avenue
CLEVELAND, OHIO, U. S. A.

APR 28 1922

Charge Account

Approved

Approved

Quantity	Description	Weight	Price	Amount	Total
1	Tooth 29332/1	15	.20-10%	2 70	
1	Tooth 29333/1	15	.20-10%	2 70	5 40

964-965

50

MAY 16 1931

Defendant's Exhibit "50"

Material described above received in good order

(Signed) (Title) DATE

DEFENDANT'S EXHIBIT NO. 50 - Sheet 2.

No. 14012

American Manganese Steel Co.,
New Castle
Del.

/

Standardized invoice adopted by National Association of Purchasing Agents.
F. 561 Ian 1-22

Shipper's Order No. B-30034
Date Shipped
Shipped from
Shipped to
Destination
Shipping Weight

Invoice date 4-26-22
Invoice No. B 6240
F.O.B. New Castle

Buyer's Order No. B-942
Requisition No.
Contract No. 4804
Car No. and Int.
PRR 41480
Via.

This column reserved for use of buyer
P. A. Record No.
CHECKED
With order
F. O. B. point
Price
Calculations
Freight
Frt. Chgd. back
INVOICE
Rec'd by P. A.
Sent by P. A.
To outer off.
From outer off.

Terms:

30 Days Net

THE BROWN HOISTING MACHINERY COMPANY
4403 St. Clair Avenue
CLEVELAND, OHIO, U. S. A.

RECEIVED
APR 28 1922
ALLEGHENY

Charge Account Approved Approved

Quantity	Description	Weight
1	Tooth 28332/1	15
1	Tooth 28333/1	15

STOCK
MAY 1922

MAY 4 1922

Material described above received in good order
(Signed) _____ (Title) _____ DATE _____

DEFENDANT'S EXHIBIT NO. 50, Sheet 2

231

...rican Manganese Steel Co.
New Castle
Del.

Standardized invoice adopted by National Association of Purchasing Agents.
F. 66 Rm 148

B-30294 | Invoice date 4-28-22 | Invoice No. B 6240 | F.O.B. New Castle | Buyer's Order No. B-42 | Requisition No. | Contract No. 4804 | Car No. and Int. PRR 41490 | Via

This column reserved for use of buyer
P. A. Record No.
With order
F. O. B. point
Price
Calculations
Freight
Frt. Chgd. back
Rec'd by P. A.
Sent by P. A.
To outer off.
From outer off.
CHECKED
INVOICE

...rom
...ped to
Destination
Shipping Weight

Terms:

30 Days Net

STOCK

RECEIVED
APR - 8 1922

THE BROWN HOISTING MACHINERY COMPANY
4403 St. Clair Avenue
CLEVELAND, OHIO, U. S. A.

Account
Charged to

Charge Account

Approved

Approved

Quantity	Description	Weight	Price	Amount	Total
1	Tooth 29332/1	15	.20-10%	2 70	
1	Tooth 29333/1	15	.20-10%	2 70	5 40

Material described above received in good order. DATE

(Signed) (Title)

DEFENDANT'S EXHIBIT NO. 50 - Sheet 3

No 37886 American Manganese Steel Company,
New Castle,
Delaware.

Def Ex 51

Standardized Invoice adopted by National Association of Purchasing Agents.

Shipper's Order No. B-38336 | Invoice date 6/27/24 | Buyer's Order No. B-20346
Date Shipped 6/27/24 | Invoice No. B-2170 | Requisition No. 200370
Shipped from New Castle, Del. F.O.B. New Castle, Del. | Contract No. | This column reserved for use of buyer
Shipped to Cleveland, O. | Car No. and Int. | P. A. Record No. 12 2/11
Destination same | With order
Shipping Weight 55# | F.O.B. point
American Railway Express | Price
Calculations
Freight
Frt. Chgd. back
Rec'd by P. A.
Sent by P. A.
To outer off.
From outer off.

RECEIVED JUN 30 1924

CHECKED

Terms: 30 Days Net

THE BROWN HOISTING MACHINERY COMPANY
4403 St. Clair Avenue
CLEVELAND, OHIO, U.S.A.

Answered
Referred to

DIVISION

RECEIVED JUN 30 1924 No. 4...

Charge Account | Approved | Approved

Quantity	Description			Weight	Price	Amount	Total
					Less 10%		
1	Tooth	30835/1 964.965	79918	55#	.1775 lb.	8 78	8 78

51

Defendants Exhibit 51
3 Sheets

Material described above received in good order

SHEET 1.

255

No. 27886 American Manganese Steel Company.

No. 37886 American Manganese Steel Company.
New Castle,
Delaware.

Standardized invoice adopted by National Association of Purchasing Agents.
F. 501 10m 6-23

Shipper's Order No. B-88336
Date Shipped 6/27/24
Shipped from New Castle, Del.
Shipped to Cleveland, O.
Destination same
Shipping Weight 55#

Invoice date 6/27/24
Invoice No. B-2170
F.O. New Castle, Del.

Buyer's Order No. B-20346
Requisition No. 20370
Contract No.
Car No. and Int.

Via American Railway Express Co.

This column reserved for use of buyer
P. A. Record No.
With order
F. O. B. point
Price
Calculations
Freight
Frt. Chgd. back
Rec'd by P. A.
Sent by P. A.
To outer off.
From outer off.

Terms: 30 Days Net

THE BROWN HOISTING MACHINERY COMPANY
4403 St. Clair Avenue
CLEVELAND, OHIO, U.S.A.

RECEIVED
JUN 30 1924

Ft. F. G.
JUL 1 1924

Charge Account Approved Approved

Quantity	Description			Weight
1	Tooth	20833/1	79918	55#

C. A. S.
JUL 2 1924

DRAY SLIP SENT 7-1-24

ACCT. 21

Material described above received in good order 7-1-24
(Signed) B. [illegible] (Title) ——

DEFENDANT'S EXHIBIT No. 51 - Sheet 2

AMERICAN MANGANESE STEEL CO.

B 21.0

(AMSCO) CHICAGO HEIGHTS, ILL.
NEW CASTLE WORKS

DATE June 27, 1924.

TERMS: 30 DAYS NET
F. O. B. NEW CASTLE, DEL.

RECEIVED JUN 30 1924
Answered
Entered in

SOLD TO The Brown Hoisting Machinery Co.,
ADDRESS Cleveland, Ohio.

DATE SHIPPED June 27, 1924.
VIA American Railway Express Co.
CAR NO.
INITIAL

SHIPPED TO The Brown Hoisting Machinery Co.,
ADDRESS Cleveland, Ohio.
TERR. WGB

PLEASE REMIT IN CHICAGO OR NEW YORK EXCHANGE TO AMERICAN MANGANESE STEEL CO., CHICAGO HEIGHTS, ILL.

TAL

YOUR ORDER NO.	YOUR REQ. NO.	NO. PCS.	MANGANESE STEEL			WEIGHT	PRICE	AMOUNT
B-38336	B-20346 200370	1	Teeth	30835/1	79918	55#	.1775 lt. Less 10%	8.78

ORIGINAL

DEFENDANT'S EXHIBIT NO. 51 - Sheet 3

Def Ex 52

D 4804 June 6,1922 Contract signed 2/2/22
June 2, 1922 2788
Cleveland, O. Our Wks.Cleve.

Janesville, Wis. N.YC.

S.G. Cool,
123 N. Wells St.,
Chicago, Ill.

Brownhoist Shoveling attachment with
1 Yd. Shovel Bucket for #2 Brownhoist
Loco. Crane #8732. 980 00

D 6480 June 6,1922 6521
June 2,1922 2788
Cleveland, O. Our Wks. Cleve.
The Huntington Iron Works,
839-847 Adams Ave.,
Huntington, W. Va. B&O

The Yale Towne Mfg. Co.,

Stamford, Conn.

Clamps Style "D" 1/2 ton for 8" at
18.42 I Beam (without straps.) 1 50 33 00

DEFENDANT'S EXHIBIT NO. 52 - Sheet 1

Invoice sheet 2788 of the Brown Hoisting Machinery Company Referring to Order D-4804 to S. G. Cool.

Sheet 2 following is Account Book Page No. 2 of The Brown Hoisting Machinery Company Referring to Order D-4804 to S. G. Cool.

The Brown Hoisting Machinery Co., Cleveland, Ohio, U. S. A.

Of & S2 Sheet 2

Name S. G. COOL
Address 128 N. WELLS STREET, CHICAGO, ILLINOIS
Attention of

Account No.
Page No. 2

OLD BALANCE	ENTERED REFERENCE	OLD CHECK	DATE 1922	YOUR CHARGE	ITEMS	DEBITS	CREDITS	BALANCE	
			MAY		Brought Forward			1051 25	--
1051 25	SB-2530	D-5298	4/27	CONT.DAT. 2/28/22	BUCKET RETD.		950 00		
	SB-2526	D-6274	9	LET.5/1/22 S.G.COOL	LINK ETC	18 00		119 25	✡ S G CC
119 25	SB-2684	D-5091	4/29	PH.4/19/22	-MATL.RETD.		25 50		
	SB-2684	D-5045	25		TO CANCEL INV.4/11/22		20 75	73 00	✡ S G CC
73 00	SB-2718	D-6546	29	LET.5/17/22	-CRATE BAR	9 00		82 00	✡ S G CC
82 00	CB-744		31		CASH		55 00	27 00	✡ S G CC
			JUNE						
27 00	SB-2788	D-4804	6	CONT.DAT. 2/2/22	SHOVELING ATTACHMENT	980 00		1007 00	✡ S G CC
1007 00	CB-751		8		CASH		27 00	980 00	✡ S G CC
980 00	SB-2891	D-6748	16	LET.5/29/22	-GRATE BARS	14 00		994 00	✡ S G CC
			JULY						
994 00	CB-774		5		CASH		994 00	0 00	✡ S G CC
			OCT						--
0 00	SB-4291	D-9203	12		SEGMENTS	2 48		2 48	✡ S G CC
2 48	CB-865		21		CASH		2 48	0 00	✡ SG COC
			NOV-						
0 00	SB-4811	D-10112	21		SHEAVE	9 00		9 00	✡ S G CC
			DEC						
9 00	CB-908		12		CASH		9 00	0 00	✡ S G CC
			1923						
			SEPT						
0 00	SB-9587	Z-19493	7		CAP ETC	40 00		40 00	✡ S G CC
40 00	CB-1146		21		CASH		40 00	0 00	✡S G COC
0 00	SB-9742	Z-19633	17	LET.9/13/23	-SHAFT	27 50			
	SB-9839	Z-19746	20	PH.9/20/23	-GEAR	16 50		44 00	G CC
			OCT						
44 00	CB- 1155		2		CASH		27 50	16 50	✡ S G CC
16 50	CB-1167		16		CASH		16 50	0 00	✡ S G CC
0 00	SB-241	Z-20085	13	PH.10/9/23	-CAP	12 00			
	SB-312	Z-20222	17	PH.10/17/23	-SHAFT	60 00		72 00	✡ S G CC

Carried Forward

DEFENDANT'S EXHIBIT NO. 89.

MAY 16 1931

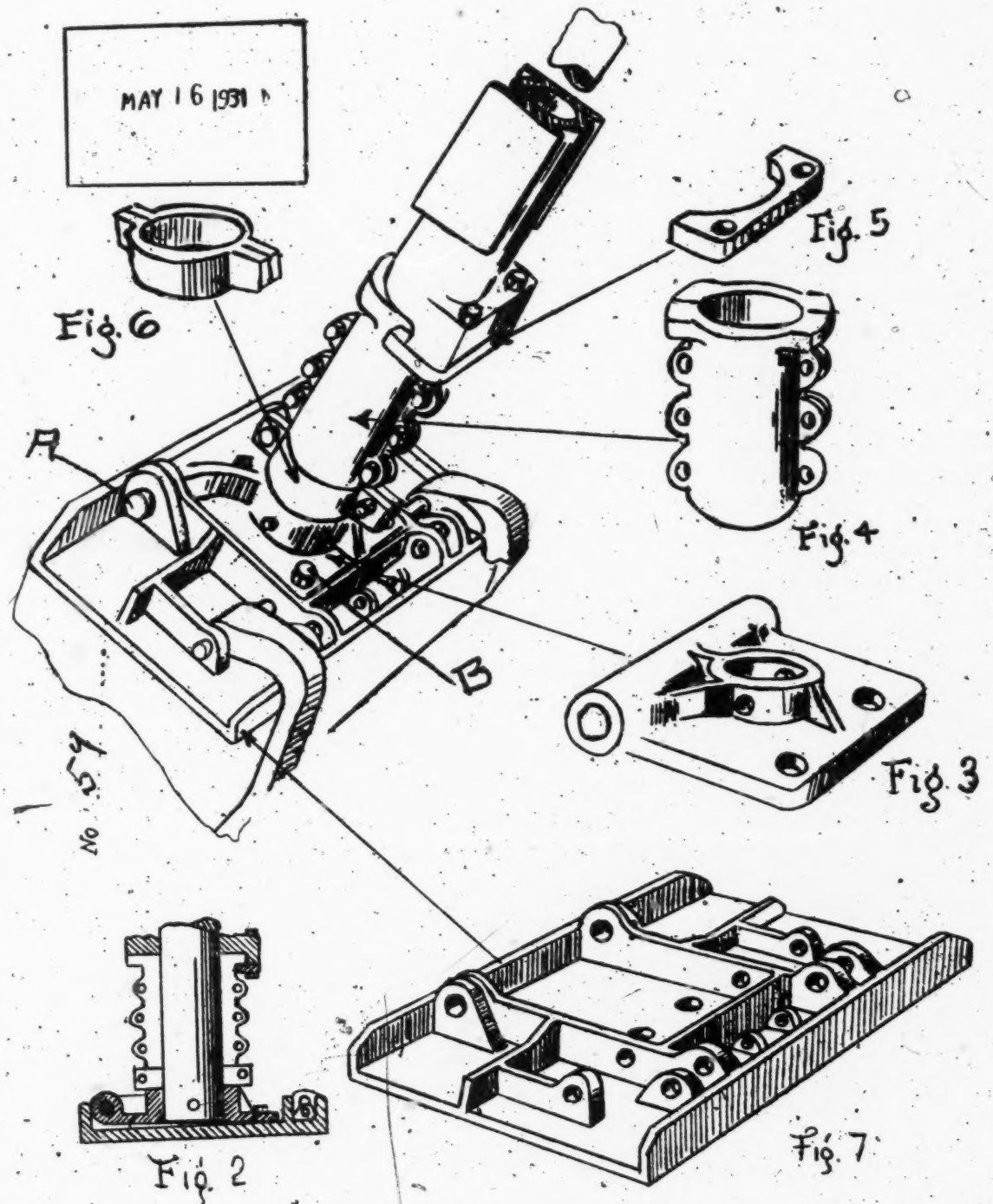


Fig. 6

Fig. 5

Fig. 4

Fig. 3

Fig. 2

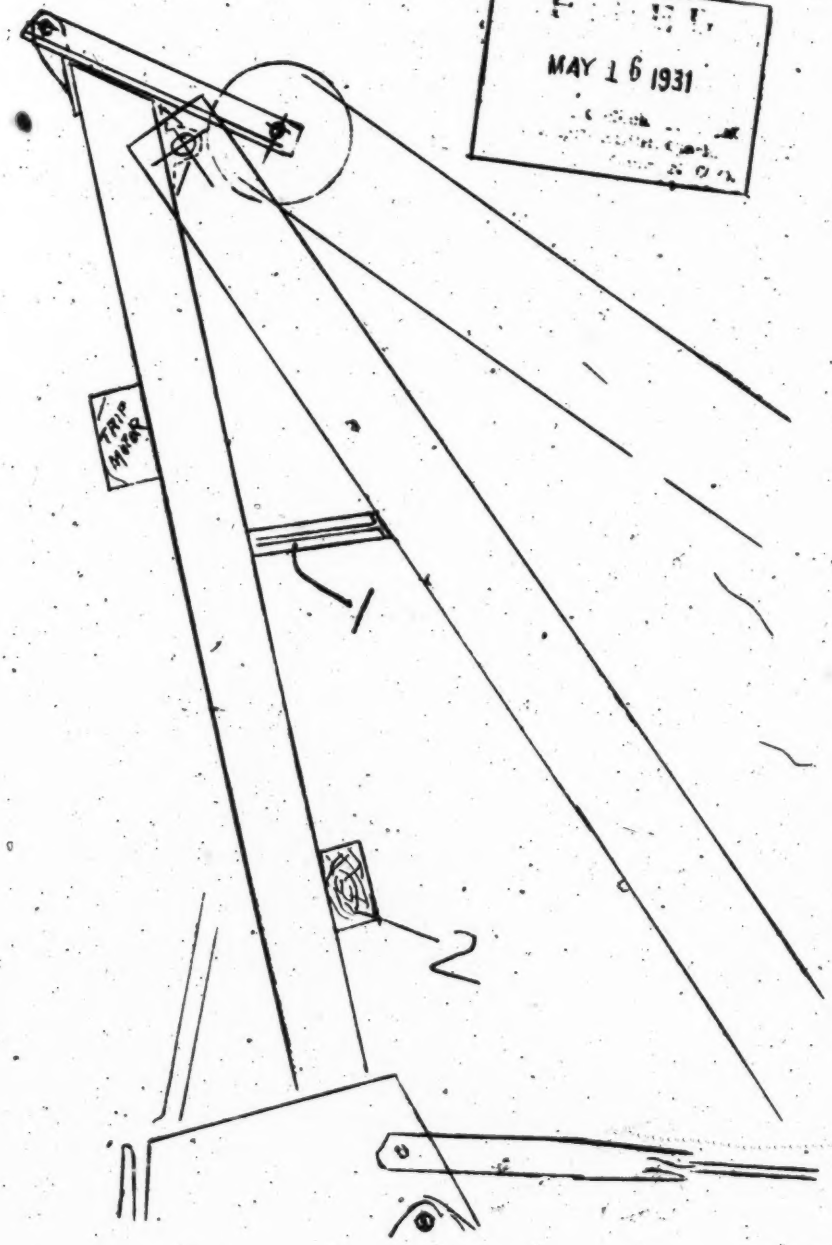
Fig. 7

964- 965 Equity

Defendant's Exhibit

No. 61

FILED
MAY 16 1931



DEFENDANT'S EXHIBIT NO. 62(20)

Book of Patents

U. S. Patent No. 557,350, March 31, 1896

To J. B. Webber

Steam Shovel or Excavator

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been reproduced hereinbefore as Defendant's Exhibit No. 20, the same is omitted at this point to avoid duplication. (See Page 193 of Exhibits, Vol. III.)

DEFENDANT'S EXHIBIT NO. 62(21)

Book of Patents

U. S. Patent No. 579,589, March 30, 1897

To G. W. King

Steam Shovel or Excavator

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been reproduced hereinbefore as Defendant's Exhibit No. 53, the same is omitted at this point to avoid duplication. (See Page 265 of Exhibits, Vol. III.)